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Maryland.
CONSTITUTIONAL CONVENTION COMMISSION.

COMMISSION MEETING

Adult Education Center, University of Maryland
College Park, Maryland

September 18, 1966

COMMISSION MEETING

Adult Education Center, University of Maryland
College Park, Maryland

September 19, 1966

(Part 1)

VOLUME IV

CONSTITUTIONAL CONVENTION COMMISSION

WILLIAM PRESTON LANE, JR.

Honorary Chairman

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Chairman

ROBERT J. MARTINEAU

Secretary

E. DALE ADKINS, JR.

STANFORD HOFF

HARRY BARD

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CALHOUN BOND

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JOHN W. MITCHELL

HAL C. B. CLAGETT

E. PHILLIP SAYRE

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ALFRED L. SCANLAN

MRS. MAURICE P. FREEDLANDER

L. MERCER SMITH

JAMES O'C. GENTRY

MELVIN J. SYKES

JOHN R. HARGROVE

FURMAN L. TEMPLETON

WILLIAM C. WALSH

* * * * *

JOHN C. BROOKS

Executive Director

KALMAN R. HETTMAN

Assistant to the Executive Director

* * * * *

William Prescott Allen (*Resigned January 5, 1966*)

Ernest N. Cory, Jr. (*Resigned May 13, 1966*)

Walter R. Haile (*Resigned December 20, 1966*)

William J. McWilliams (*Resigned September 10, 1965*)

Ridgely P. Melvin, Jr. (*Resigned August 2, 1966*)

George L. Russell, Jr. (*Resigned July 12, 1966*)

* * * * *

700 Mercantile Trust Building
Baltimore, Maryland 21202

CONSTITUTIONAL CONVENTION COMMISSION

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AND DECLARATION OF RIGHTS

James O'C. Gentry, Chairman
(appointed Chairman on
July 12, 1966)
Charles Della
Leah S. Freedlander
John R. Hargrove
(appointed on July 12, 1966)
Stanford Hoff
John W. Mitchell
(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

* * * *

William Prescott Allen
(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until
July 12, 1966)

COMMITTEE ON THE LEGISLATIVE
DEPARTMENT

Harry Bard, Chairman
Charles Della
Edward T. Miller
Charles Mindel
Alfred L. Scanlan
John H. Michener, Reporter
(appointed on September 12, 1966)

* * * *

Martin D. Jenkins
(served until June 6, 1966)
William C. Walsh
(served until June 6, 1966)
Alexander Harvey, II
(served as Reporter until
September 12, 1966)

COMMITTEE ON THE EXECUTIVE
DEPARTMENT

E. Dale Adkins, Jr., Chairman
Calhoun Bond
Charles Mindel
E. Phillip Sayre
Furman L. Templeton
Garrett Power, Reporter

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Elsbeth Levy Bothe
(served until June 6, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)

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DEPARTMENT

Robert J. Martineau, Chairman
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Elsbeth Levy Bothe
John R. Hargrove
(appointed on July 12, 1966)
Clarence W. Miles
Melvin J. Sykes
(appointed on July 12, 1966)
Lawrence F. Rodowsky, Reporter

* * * *

Richard W. Case
(served until June 6, 1966)
William J. McWilliams
(served as Chairman until
September 10, 1965)
Ridgely P. Melvin, Jr.
(served as Chairman from
September 10, 1965 to
August 2, 1966)
George L. Russell, Jr.
(served until July 12, 1966)
E. Phillip Sayre
(served until June 6, 1966)
L. Mercer Smith
(served until June 6, 1966)
William C. Walsh
(served until June 6, 1966)

COMMITTEE ON STATE FINANCE
AND TAXATION

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Calhoun Bond
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Martin D. Jenkins
L. Mercer Smith
Stephen H. Sachs, Reporter

* * * *

Harry Bard
(served until June 6, 1966)
Charles Mindel
(served until June 6, 1966)

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SUBDIVISIONS AND LOCAL
LEGISLATION

Hal C. B. Clagett, Chairman
(appointed Chairman on
December 2, 1965)
Franklin L. Burdette
Leah S. Freedlander
Clarence W. Miles
(served as Chairman until
December 2, 1965)
L. Mercer Smith
John B. Howard, Reporter
(appointed on May 12, 1966)

* * * *

E. Dale Adkins, Jr.
(served until June 6, 1966)
William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
(served from July 12, 1966 to
December 20, 1966)
William J. McWilliams
(served until September 10, 1965)
Ridgely P. Melvin, Jr.
(served until August 2, 1966)
Furman L. Templeton
(served until June 6, 1966)
John Martin Jones, Jr.
(served as Reporter until
February 23, 1966)

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PROVISIONS

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Leah S. Freedlander
James O'C. Gentry
Furman L. Templeton
Lewis A. Noonberg, Reporter
(appointed February 26, 1966)

* * * *

William Prescott Allen
(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
(served from July 12, 1966
to December 20, 1966)
Edward T. Miller
(served until June 6, 1966)
Frank A. DeCosta, Jr.
(served as Reporter until
February 22, 1966)

COMMITTEE ON STYLE

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E. Dale Adkins, Jr.
Harry Bard
Richard W. Case
Martin D. Jenkins
Margaret Kostritsky, Reporter

* * * *

Calhoun Bond
(served until June 6, 1966)
Hal C. B. Clagett
(served until June 6, 1966)

COMMITTEE ON CONVENTION PROCEDURES

Alfred L. Scanlan, Chairman
Hal C. B. Clagett
James O'C. Gentry
Robert J. Martineau
Edward T. Miller
John W. Mitchell
(appointed on November 9, 1966)
E. Phillip Sayre
Eugene Pitrof, Reporter

* * * *

Franklin L. Burdette
(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

1 CONSTITUTIONAL CONVENTION COMMISSION

2

3 Meeting of the Constitutional Convention

4 Commission held on Sunday, September 18, 1966, at

5 1:30 o'clock p.m., at the Adult Education Center,

6 University of Maryland, College Park, Maryland.

7

8 PRESENT:

9 H. Vernon Eney, Esquire,
 Chairman of the Commission

10 Honorable E. Dale Adkins, Jr., Member

11 Dr. Harry Bard, Member

12 Calhoun Bond, Esquire, Member

13 Mrs. Elsbeth Levy Bothe, Member

14 Dr. Franklin L. Burdette, Member

15 Richard W. Case, Esquire, Member

16 Hal C. B. Clagett, Esquire, Member

17 Mrs. Maurice P. (Leah S.) Freedlander, Member

18 James O'Connor Gentry, Esquire, Member

19 Walter R. Haile, Esquire, Member

20 Stanford Hoff, Esquire, Member

21 John B. Howard, Esquire, Member

 Dr. Martin D. Jenkins, Member

 Honorable William Preston Lane, Jr., Member

 Robert J. Martineau, Esquire, Member

 Edward T. Miller, Esquire, Member

 Charles Mindel, Esquire, Member

 Mr. E. Phillip Sayre, Member

 John Mitchell, Esquire, Member

 Melvin J. Sykes, Esquire, Member

 John R. Hargrove, Esquire, Member

 Dr. Furman L. Templeton, Member

 Charles Della, Esquire, Member

Reported by:
N. Swetland
W.P. Banister

1 ALSO PRESENT:

2 John C. Brooks, Esquire, Executive Director
3 Dr. Clinton Ivan Winslow, Consultant
4 Dr. John H. Michener, Research Assistant

5 -----

6 THE CHAIRMAN: The first item should be an
7 expression of thanks from the head of the table for the
8 excellent attendance at a meeting on a beautiful Sunday
9 afternoon in the fall such as we have today. I think it
10 bespeaks the desire all of us have to finish our task we
11 have before us. I would like formally to extend a wel-
12 come to Mr. John Mitchell, a new Member of the Commission
13 appointed by the Governor a few weeks ago in place of
14 Judge Ridgely Melvin. I have introduced Mr. Mitchell
15 personally to everyone at the table.

16 Mr. Mitchell, we welcome you, and we will load
17 you with plenty of work. Mr. Brooks has assembled all of
18 the materials which every Member of the Commission has,
19 but they are much too bulky to give you today. The
20 arrangements will be made to get it to you. The specimen
21 that you got today is just a fragment of the work. You
have had for about a month, I think, the minutes of the

1 June meeting of the Commission. Are there any corrections
2 or additions? If not, those minutes will stand approved
3 as circulated.

4 The minutes of the July meeting were circulated
5 by mail just a few days ago. I do not know how many
6 Members of the Commission have received them. Could you
7 indicate by a show of hands? Since only a few have them,
8 we will not consider those for approval today.

9 The report of the Secretary, Mr. Martineau?

10 MR. BROOKS: No report.

11 THE CHAIRMAN: Report of the Executive Director?

12 MR. BROOKS: First I would like to ask if
13 there is anyone here who did not receive a package of
14 materials yesterday and who has not gotten one today.
15 Very good.

16 First, I might report on the educational prog-
17 ram with the University of Maryland. Most of you should
18 have received copies of the three flyers that were mailed
19 out prior to last Tuesday. That is a general 4-page piece
20 and also one on the General Assembly and another on local
21 government. In that particular program, some of you have

1 had occasion to see the film we showed immediately after
2 the last meeting in this room. There are two other
3 similar slide shows being prepared that can be used as a
4 part of a general public relations and educational
5 program by the Commission any time, any occasion you are
6 called upon to make a speech or to give a program on the
7 Constitutional Convention. We would like you to consider
8 also to show one of these slide shows of 22 or 23 minutes
9 duration.

10 I would like to thank all of you for your par-
11 ticipation in the election. We didn't have all the
12 participation that we wanted in regard to the vote, but
13 we thought that insofar as it was a 3 to 1 decision Tuesday,
14 we ought to be delighted with it, in view of the fact that
15 many persons had difficulty finding the Constitutional
16 question on the voting machine. We have information that
17 many, many people missed the question altogether. I be-
18 lieve that is it, Mr. Chairman.

19 THE CHAIRMAN: I have a number of matters I
20 would like to bring to your attention. I have already
21 mentioned Mr. Mitchell's appointment. I will send out

1 to the Commission a letter announcing his committee
2 assignments within the next four or five days. I have
3 heretofore advised the Commission of the resignation of
4 Mr. Alexander Harvey as Reporter for the Committee on
5 Legislative Department and the appointment of Dr. John H.
6 Michener in his place. I think we are very fortunate to
7 have Dr. Michener to be able to and willing to assume
8 the duties of reporter to this Committee. He has, as
9 you know, been working very closely with the Committee,
10 and the transition from Mr. Harvey to Dr. Michener can be
11 accomplished without the slightest hitch in the work of
12 that Committee. We do not as yet have complete figures
13 on the results of the voting in the Constitutional Conven-
14 tion Referendum.

15 The latest figures I have are approximately
16 125,000 for, and 24,000 plus against. As soon as we have
17 the final official figures, we will send them to you. I
18 think it would interest you to know, however, that although
19 the total amount of the votes cast, somewhere roughly
20 150,000, is not as large as some of us had hoped for.
21 Nevertheless, it is a very substantial proportion of the

1 total votes cast for election. I am not sure of the
2 total, but I think it was a little less than 300,000,
3 and the proportion of votes cast in the Constitutional
4 Referendum to the total votes cast for the nominees for
5 governor is, I think, higher than it has ever been on a
6 Constitutional Convention Referendum in the present cen-
7 tury, at least, 1930-1950.

8 More interestingly, I think, is the fact that
9 in some counties, I know for instance in Talbot County
10 on the Eastern Shore, the percentage of persons voting on
11 the Constitutional Convention Referendum was approximately
12 50 per cent of the total number of persons casting ballots
13 in that election. Whether Congressman Miller had any-
14 thing to do with that, I don't know, but I was very
15 pleasantly surprised, and the same thing is true in some
16 of the other counties. We found on election morning
17 that there were a great many complaints made, many
18 directly to our office; by 11 o'clock I think we had 25 or
19 30 telephone calls, and several of the radio stations
20 told us they had been deluged with calls, people at first
21 insisting that the question was not on the voting machine.

1 We thought at first it was hard to see and that it was
2 uniformly on the machine and in the top row center. This
3 is where it was on most, but not all of the machines in
4 Baltimore City. We got all of the radio stations and all
5 of the TV stations in the Baltimore area by 12 o'clock
6 making repeated announcements on the air as to the loca-
7 tion of the question on the voting machine or what we
8 thought was the location on all the voting machines, and
9 by half past one, we had many of the TV stations and
10 radio stations in the Washington area making similar
11 announcements.

12 The day we were on, we discovered, however,
13 in some voting machines where for instance they had the
14 Democratic and Republican candidates on both machines,
15 this question was on the bottom of the machine below the
16 Republican candidates so a person with bifocals would
17 have been almost impossible to see it without stooping
18 down very low.

19 In the Washington area and in Anne Arundel
20 County, it was in what we thought was the best spot in the
21 upper left, immediately above the names of the nominees for

1 governor, but we had a number of telephone calls of
2 people saying that it should have been lettered in red
3 because you still couldn't find it. It was just too much
4 black area and too small a white area.

5 GOVERNOR LANE: These are the official counts.

6 THE CHAIRMAN: Governor Lane has just handed
7 me these figures. He says official figures on a total
8 of 1323 precincts out of 1492, the votes for, 129,535,
9 and the votes against, 23,923. The figure has gone up
10 since the last one I had. Thank you, Governor.

11 I would like to take this opportunity to tell
12 the Commission and in this way to express my thanks
13 and that of the Commission to the Citizens Committee
14 for a terrific job of educating the public on the Consti-
15 tutional Convention Referendum. You know that a 58-member
16 Committee undertook to publicize the Convention. They
17 succeeded in getting literally thousands of dollars worth
18 of publicity at no cost at all by having large advertisers
19 and other people donate time or space as a matter of
20 public service.

21 The pamphlets mailed out by the Extension Ser-

1 vice of the University of Maryland had a very wide
2 coverage. The problem here, of course, was to get lists
3 of addresses and actually get the mailing accomplished.
4 We had a great deal of help in a number of ways. One of
5 the large insurance companies made available its list
6 of some 40,000 policyholders in the State of Maryland,
7 durnished us with address slips. We were able to get
8 the City of Baltimore to give us address slips on the
9 entire -- list of employees of the City, some 30,000,
10 and similar arrangements with other groups so that the
11 pamphlets had a wide coverage.

12 The problem with the pamphlets was that the
13 mailing was not first class mailing, and the actual
14 delivery of some of them was a little too close to the
15 election. The Citizens Committee is preparing a report of
16 its activities at our request because we think this will
17 be valuable in undertaking a campaign to educate the
18 public as to the importance of voting next spring on the
19 election for delegates to the Convention.

20 In this connection, I would like to urge every
21 Member of the Commission wherever you can, to accept

1 requests to speak on the subject of the Constitutional
2 Convention. We find as a result of the referendum, various
3 civic groups, small and large, are asking persons to
4 come and talk to them about the Constitutional Convention.
5 It is of the utmost importance that the whole matter of
6 the Convention be kept before the public and the public
7 realize the importance so that we can achieve the objec-
8 tive of having the best possible people stand for election
9 of delegates next spring.

10 We think one of the ways you can help in this
11 endeavor is to accept the invitations to speak. You will
12 find that the groups to which you talk uniformly are
13 interested in what you have to say, they are interested in
14 the whole subject of constitutional revision. They are
15 interested in what the Commission is doing and also in
16 what it is not undertaking to do.

17 Now, we are running behind our schedule of
18 target dates. On our original target, we would have had
19 a completed tentative draft of the Constitution by this
20 meeting. We do not. I think we are well on the way, but
21 it is imperative that we have a completed tentative draft

1 by the October meeting because this will really be only
2 October and November for consideration of that draft, and
3 its final revision, since we must have the month of
4 December for final work of the Committee on Style and
5 editing, printing, and so forth. This means it will not
6 be possible for us to have a meeting on some tentative
7 drafts of separate parts of the Constitution which has
8 not yet been submitted to you prior to the full draft to
9 be considered at the October meeting. With this in mind,
10 the staff will endeavor to work closely with each Com-
11 mittee and the Chairman of each Committee and with the
12 Committee on Style in the next few weeks and circulate
13 to each Member as far in advance of the next meeting as
14 possible a complete draft of the Constitution.

15 We will probably do this even though we are
16 unable at that time to send out the detailed reports of
17 each Committee. We think it is important that the Com-
18 mission Members before the next meeting have an opportunity
19 to get a bird's-eye view of the entire document and
20 to be thinking about it before they start further, final
21 consideration of the detailed reports that will be con-

1 sidered. This means that the October meeting will be
2 indeed a very important meeting, and I am afraid it will be
3 a lengthy meeting. I will take up with you before the
4 end of the session on Tuesday what we should do in
5 October; depending on what progress we make at this meet-
6 ing, I think it is clear that we will have to have more
7 than a two-day meeting, and there may be a question as to
8 whether it will be better to have a three-day meeting
9 such as we are having this time, or to have two weekend
10 meetings a week apart. You might be giving some thought
11 to that in the next day or so.

12 I am sure all of you received the notice indi-
13 cating that, through the courtesy of the Governor, we
14 will be his guests on the State yacht tomorrow evening.
15 We will adjourn the usual time tomorrow afternoon about
16 5:15, leave here about 5:30 and go aboard the yacht about
17 6 o'clock. We will have dinner aboard and return to
18 Annapolis around 9:15 or 9:30 and drive back to College
19 Park so that you will be back in ample time.

20 I think our experience at the last meeting,
21 when one reads the transcript, at least indicated that a

1 late evening session doesn't pay dividends, because I
2 think all of us by late afternoon were beginning to
3 tire. It was with this in mind that we arranged the
4 social break for Monday evening so that we will have a
5 chance to relax and remain together and discuss some of
6 the problems that we may be considering. With this same
7 thought in mind, while we have an evening session tonight,
8 it will not be a long session. I would hope to keep it
9 down to an hour, certainly not longer than an hour and a
10 half, so that by 9 or 9:30 we could be free of the meeting.

11 We will still have plenty of reading to do,
12 but also some opportunity for a little relaxation before
13 the meeting tomorrow. I personally would like to suggest
14 that our sessions tomorrow and Tuesday morning begin at
15 8:30 in the morning. I make that suggestion because of
16 the great amount of material that we have to go over at
17 this session. Rather than decide that, I will put the
18 question to you before we adjourn tonight.

19 I am not sure what time dinner will be this
20 evening. We will have dinner arranged for all of us
21 together, probably around 6 o'clock, and if so, we will

1 adjourn about 5:30 for a little break before dinner and
2 then come back perhaps at 7:30. We will have the exact
3 time before we break up this afternoon. One other general
4 observation before we start on the consideration of the
5 Committee Reports. As all of you know, we have had the
6 stenographic reporter present at the last three Commission
7 meetings and have been taking the transcript of the pro-
8 ceedings of the Commission. This is an item for which we
9 did not budget. It is specific. We have considered whether
10 the cost/^{is} justified and whether we should dispense with
11 it. The experiences indicate that without it, the staff
12 and more particularly the Committee reporters and Chair-
13 man are really lost. We can't possibly sit here and
14 engage in debate and make notes at the same time as to
15 the action of the Commission, so that for this reason, for
16 no other, we will continue to have the transcripts. There
17 is, however, another reason. I have discussed this, not
18 with a large number, but with various Members of the
19 Commission, and their feeling uniformly is that this is
20 the only way we can really have a record of the discussion
21 and debate of this Commission and give us the basis for

1 a report ultimately to the Governor and the Legislature
2 and people of the State, not only as to what we recommend,
3 but as to why we recommend what we do.

4 Therefore, we want to continue with the trans-
5 cript but in order that it be meaningful, please keep
6 in mind the very simply rules that we must observe, wait
7 until the Chairman recognizes you before you speak, both
8 so that the record gives me a chance to speak your name
9 and it will appear in the record, and also to aid the
10 reporter.

11 Secondly, the debate will be more orderly. Be-
12 cause of the great amount of material we must get over,
13 I do not want to limit debate, but insofar as is possible,
14 say what you want to say at one time, and then do not
15 repeat again in the same debate. I want to state again
16 the few rules governing debate and discussion of the
17 Reports that we worked out at the last meeting and which
18 I think by and large worked satisfactorily.

19 This is not like a formal session of the Legis-
20 lature, for instance. It is more in the nature of con-
21 sideration by the Committee as a whole and yet we have to

1 have some rules. We can't shut off all reconsideration
2 of matters that have been discussed before because too
3 often at the meetings where they are discussed, we have
4 not had great opportunity to study the material at length.
5 Therefore, there will not be an ironclad rule on recon-
6 sideration of matters that have been considered by the
7 Commission before. Instead, we will follow the same
8 rules as we did at the last meeting. Any matter may be
9 reconsidered on motion of the Committee. Any matter
10 may be reconsidered on motion of a Member provided it is
11 approved by a majority of the Commission.

12 I request both Committee Chairmen and Members
13 not to ask for reconsideration of the matters unless you
14 feel that it is vital, that it be discussed again and re-
15 considered.

16 Now, one slight correction in addition to the
17 agenda which you received in the mail. The indication
18 was that at this evening's meeting we would consider the
19 Fourth Report of the Committee on Miscellaneous Provisions.
20 We will consider that Report but only the portion thereof
21 dealing with militia. We will not consider the portion

1 of the Report dealing with education. That part of
2 that Report and the Report of the State Committee on
3 Finance and Taxation which touches to some extent on the
4 same areas will be considered at the October meeting.

5 Now, are there any questions, comments or any
6 announcements anyone wishes to make? If not, we will
7 move to a consideration of the Sixth Report of the Com-
8 mittee on Legislative Department.

9 Dr. Bard?

10 MR. CASE: Mr. Chairman, I have a question.
11 Did you say our Report would be considered at the October
12 meeting?

13 THE CHAIRMAN: Not your First Report, your
14 Second Report which deals with budgetary provisions touches
15 on education. So that all of you will have in mind what
16 the tentative agenda is, let me just state it now. We
17 hope to conclude this afternoon the Report of the Committee
18 on Legislative Department, the Ninth Report on the Committee
19 on Executive Department, and the Seventh Report of the
20 Committee on Elective Franchise dealing with elective
21 franchise.

1 This evening, we will consider any of those
2 Reports we do not finish this afternoon, and the Fourth
3 Report of the Committee on Miscellaneous Provisions deal-
4 ing with militia. Tomorrow morning, the first thing is the
5 Report of the Committee on Taxation and Finance, and
6 secondly, the Report on the Committee on the Judiciary
7 Department. Tomorrow afternoon we will take up the Report,
8 Eighth Report of the Committee on Elective Franchise
9 dealing with Declaration of Rights; Tuesday morning we
10 will take up the tentative draft of the Fifth Report of
11 the Committee on Political Subdivisions, and if there is
12 time, the Sixth Report of the Committee on Convention
13 Procedures.

14 Dr. Bard?

15 DR. BARD: Two announcements I would like to
16 make. First, to begin with, you will note that the
17 Committee has not yet made any recommendation in respect
18 to unicameralism. We expect to have that recommendation
19 ready at the next meeting of the Commission; and secondly,
20 I would like to announce that I have asked Dr. Michener to
21 be beside me because the two of us have been working in

1 connection with these changes as well as the Committee
2 as a whole. At the meeting held on August 21, 1966, the
3 Commission considered drafts of 18 sections of the new
4 Constitution dealing with the Legislative Department
5 as submitted in our Report. Some sections were approved
6 as submitted. Others were revised, and still others were
7 referred back to us for further study, so this Sixth Re-
8 port which you have with you will include action on the
9 part of our subcommittee in terms of revisions that you
10 submit as well as revisions noted here that took place
11 as a result of the Commission recommendations at the
12 last meeting.

13 In this Report, the Committee on the Legisla-
14 tive Department presents drafts of those sections which
15 were revised or referred back to us for revision. The
16 Committee also submits comments on four sections of the
17 present Constitution dealing with the Legislative Depart-
18 ment, that is over and above what we reported last time.

19 There are sections that will be new in our
20 commentary. Now, the first item of importance the Com-
21 mittee, in the sections it is resubmitting has placed all

1 required extraordinary majorities at two-thirds rather
2 than three-fifths of the Members of the House involved.
3 The Committee recommends that all provisions for extra-
4 ordinary majorities be set at the two-thirds figure. Let
5 me put some meat into that.

6 In the Constitution by way of illustration,
7 Article 3, Section 27, calls for three readings unless
8 two-thirds of the Members so decide; that is furthermore
9 Article 3, Section 19, calls for the expulsion of a Mem-
10 ber of the House if two-thirds so decide after proceeding.

11 On the other hand, in connection with amend-
12 ments to the Constitution, Article 14, Section 1, three-
13 fifths are required. In connection/^{with}the Governors veto,
14 three-fifths are required for overriding a veto, Article
15 2, Section 17. In connection with referendum, Article
16 14, Section 2 requires three-fifths of the State Legis-
17 lature.

18 Now, it is the belief of the Legislative
19 Department Committee that we ought to make this uniform
20 and that it is our feeling that uniformity ought to be
21 along the lines of two-thirds. By way of illustration,

1 the United States Constitution uses two-thirds for amend-
2 ments, it uses two-thirds in terms of reacting to its
3 own membership, and this fraction is more common we find
4 in connection with these requirements, and so throughout
5 this entire paper, we would like the privilege of using
6 two-thirds, and we are recommending that where the frac-
7 tions are used in other parts of the Constitution, two-
8 thirds be used. We don't think the differences are great.

9 However, minor as they may be, if you do your
10 arithmetic, it would be a slight difference that would
11 make the requirement a little bit tougher under two-thirds
12 but not much. We think the uniformity factor is the im-
13 portant factor.

14 Now, Mr. Chairman, I don't know whether you
15 want to handle that at this stage or just leave it as a
16 recommendation which would be acted upon by the other sub-
17 committees, but we felt this remark was important because
18 throughout our recommendations here, the two-thirds frac-
19 tion would be in use.

20 THE CHAIRMAN: I think it would be desirable to
21 discuss it now, because the other Committees, for instance,

1 the Committee on Executive Department can't do its draft-
2 ing without having this, and the question is a very im-
3 portant one. Am I correct in my understanding of your
4 recommendations that the two-thirds be two-thirds of the
5 Members elected to each House, or two-thirds of those
6 present?

7 DR. BARD: Two-thirds of the Members elected.

8 THE CHAIRMAN: So that would be a very, very
9 high percentage of Members elected authorized to propose
10 a constitutional amendment or to override the Governor's
11 veto.

12 DR. BARD: As far as this is, the Senate is
13 concerned, it would mean 30 instead of 27 as now con-
14 stituted. As far as the House is concerned, it would
15 be 96 instead of 87. The changes are not great, but there
16 would be a significant change. We had two elements involved
17 in this. It is our feeling that the use of both frac-
18 tions is confusing to one who makes the study of this whole
19 concept, and we believe that it would be in order to use
20 one or the other fraction.

21 We tend to believe that the two-thirds fraction

1 is a better one to use in the extraordinary action that
2 is taken, is one that usually requires a number significant-
3 antly.

4 THE CHAIRMAN: Let me suggest that for purposes
5 of discussion we consider first, not the question of
6 uniformity, but the question of whether a two-thirds
7 rather than a three-fifths vote should be required to
8 override the Governor's veto to propose a constitutional
9 amendment or to pass what we would call an emergency act,
10 a bill to take effect notwithstanding a referendum.
11 What is concerning me is the fact that I think we all
12 know that if there is any real fight on, it is very difficult
13 to get a three-fifths vote, and it may be so difficult as
14 to be impossible to get a two-thirds vote.

15 I simply want to have the matter fully dis-
16 cussed by the Commission.

17 DR. BARD: May I comment just briefly further.
18 It is our belief that as the numbers rise as far as the
19 total numbers in the State Legislature, that is as we
20 have seen arise from 29/43 in the Senate and rise from
21 123 to 142 in the House, and perhaps even a further rise,

1 then we believe that it becomes increasingly important
2 that this fraction be two-thirds because as it rises,
3 then proportionately, you would need a more significant
4 number to act in terms of extraordinary circumstances.

5 THE CHAIRMAN: Any comment, discussion?

6 DR. BARD: Furthermore, the United States
7 Constitution is using two-thirds.

8 THE CHAIRMAN: Is that also two-thirds of the
9 Members elected?

10 DR. BARD: Yes, not at all times.

11 THE CHAIRMAN: I thought it was those present.

12 DR. WINSLOW: Never two-thirds in the United
13 States Congress.

14 THE CHAIRMAN: Is it two-thirds of those present?

15 DR. WINSLOW: Two-thirds of those present.

16 THE CHAIRMAN: I think constitutional amendment
17 states two-thirds of both Houses of Congress.

18 DR. BARD: Let me check on that, Jim. I don't
19 know whether you are right on that, but I will check.

20 THE CHAIRMAN: I seem to remember an argument
21 being made about the Fourteenth Amendment that it wasn't

1 proposed when two-thirds of both Houses were present.

2 DR. BARD: Congress, whenever two-thirds of
3 both Houses, not those present.

4 DR. WINSLOW: That has been interpreted, sir, I
5 think as two-thirds of those present. I know of no case
6 in which there is two-thirds of all the Members required
7 of the National Assembly.

8 MR. CLAGETT: What would be the arithmetic,
9 what would be two-thirds of the House and Senate?

10 THE CHAIRMAN: You mean as of the next session?

11 MR. CLAGETT: Yes, sir.

12 DR. BARD: Two-thirds would be 96, as I got
13 the figure.

14 THE CHAIRMAN: Of what?

15 DR. BARD: Of 142, the House and three-fifths
16 would be 87, a difference of seven votes. In the Senate,
17 it would be 27 under the three-fifths rule, and 30 under
18 the two-thirds rule.

19 THE CHAIRMAN: Of course, this means, and to
20 use your illustration, 96 votes of those present would
21 mean that any absences by illness or any other reason

1 would be a part of the one-third that you are not count-
2 ing. I am not expressing that very well.

3 DR. BARD: It would work the other way, too.

4 THE CHAIRMAN: It could be much more than two-
5 thirds of those present is what I am suggesting.

6 Mr. Miller?

7 MR. MILLER: Mr. Chairman, in the Federal level
8 in the Congress of the United States, a number of Members
9 fluctuate, of course, because of the larger membership
10 the more vacancies there may be, and the rule is very
11 simple. It is two-thirds of those present, and it requires
12 a quorum, of course, but after that, two-thirds of a legal
13 meeting of the House or Senate, the two-thirds rule is
14 met.

15 THE CHAIRMAN: Any further comment?

16 DR. BURDETTE: I am a little confused as to
17 whether we are now talking about two-thirds of all Members
18 serving or two-thirds of those present, presuming a quorum.

19 THE CHAIRMAN: Dr. Bard says the recommendation
20 of his Committee is two-thirds of the membership.

21 DR. BARD: I am not sure. I wanted to express
this -- there is a long time appeal to me for the

1 recommendation, I don't feel strongly about it, the two-
2 thirds, but I think one of the problems of the Legislature
3 is that there is very little limelight on the Legislature
4 in any specific terms while on the contrary in the national
5 government, there is a very great deal of limelight.

6 Some of the Legislatures I have observed have
7 a great deal of absenteeism. When I was living in New
8 Jersey, if anybody was absent to count him present, not
9 in voting, but voted in accordance with his wishes. This,
10 of course, means the public has no real way from the
11 record of knowing what happens in a legislative career
12 which means a small number could enact the legislation.

13 I am really attempting, Mr. Chairman, to
14 counter some of the arguments that I thought you were
15 making by inference or a two-thirds majority of a quorum
16 which it seems to me to be a very dangerous business in a
17 real crisis. You make the point it is hard to get a two-
18 thirds majority, but I make the point it is fairly easy
19 to get anything through when nobody is around, and I think
20 that is more likely to happen in the Legislature in the
21 State than in the national Congress.

1 MR. SAYRE: Speaker Mandel has testified that
2 he preferred to have absolute number and that he feels
3 that three-fifths is a good workable figure. My personal
4 preference is that we have an absolute figure, three-
5 fifths be the highest and as a practical matter. If you
6 went up to two-thirds, I think as a practical matter, you
7 would have to have two-thirds of those present and voting.
8 It is more rational in my opinion to have two-thirds of
9 the Legislature than bicameral.

10 In bicameral, three-fifths -- leave that last
11 portion out.

12 THE CHAIRMAN: Any further comment?

13 DR. BARD: I would like to read from the
14 Constitution of the State of Hawaii.

15 If, after such consideration --

16 THE CHAIRMAN: Keep your voice up a little.

17 DR. BARD: If, after such reconsideration, such
18 bill or such item or items shall be approved by two-thirds
19 vote of all members to which each House is entitled, the
20 same shall become law. And further on, in regard to
21 debt limitations, authorization is on the basis of two-

1 thirds, that is throughout this entire Constitution, the
2 usage is that of two-thirds.

3 I believe I am right, Dr. Michener, in saying
4 that if one were to make a survey of which fraction is
5 used more often, in State Constitution wouldn't it be
6 two-thirds rather than three-fifths?

7 DR. MICHENER: Yes, those present and voting,
8 I am sure.

9 MR. SAYRE: Mr. Eney, I forgot one comment
10 that Mr. Mandel testified. He said he did prefer an
11 absolute number using the three-fifths because he really
12 felt there was actual experience of better attendance,
13 and he says when you have an absolute requirement, atten-
14 dance is better.

15 THE CHAIRMAN: When you say absolute number,
16 you mean percentage of the elected membership?

17 MR. SAYRE: Yes.

18 THE CHAIRMAN: Mr. Della?

19 MR. DELLA: I am sorry I wasn't at the last
20 couple of meetings of the Legislative Committee; other-
21 wise I could express an opinion there. It is my opinion

1 from my experience from working around Annapolis that
2 the absolute figure would be most advantageous in the
3 operation of the Legislature. In that way, the Legis-
4 latures know how many people have to be present in order
5 to either pass or not pass a piece of legislation, es-
6 pecially if it is going to be a veto on a constitutional
7 question.

8 There are, sometimes in the evening sessions,
9 where they have night sessions, as many as 30 to 35
10 Members absent in the House alone. In the day sessions,
11 lot of times there are sometimes as high as 15 or 20
12 absent on many occasions. Some of them are running around
13 doing committee work, and some of them are not just there.
14 It seems to me if you are going to use the higher figure,
15 it is going to make it that much more difficult for some
16 of the people in the Legislature to be able to express
17 their views and do the things they feel their constituents
18 feel is necessary to do, but it seems to me that where
19 the two-thirds might seem appropriate, three-fifths is more
20 actually a practical matter to use in the formation of
21 legislative policy and procedure.

1 DR. JENKINS: Mr. Chairman, I question the
2 basic assumption of the Committee that consistency and
3 uniformity is a virtue in this respect. I believe that
4 for such things as the expulsion of a Member, the impeach-
5 ment of the Governor, or the adoption of a constitutional
6 amendment, we should have a two-thirds majority of the
7 elected House or at least should be a very large number
8 authorized to override a veto. I believe, in order to
9 respect the power and integrity of the General Assembly
10 we should have a lower number.

11 THE CHAIRMAN: Mrs. Bothe?

12 MRS. BOTHE: Mine was merely a query, Dr. Bard.
13 Does the present provision require that it be two-thirds
14 or three-fifths of those eligible to vote or of the number
15 in the House, because since the United States Constitution
16 apparently hasn't been correctly interpreted by the Com-
17 mittee, I was wondering whether the Maryland Constitution
18 hadn't also been misunderstood.

19 I would be willing to vote for uniformity but
20 not uniformity requiring that either the three-fifths or
21 the two-thirds be of all those eligible to vote, because

1 that would impose a rather formidable barrier, I think.

2 MR. BROOKS: By way of explanation, there is
3 a primary fundamental difference in the total operations
4 in that the Maryland Legislature constitutionally requires,
5 has a provision requiring the constitutional majority for
6 the enactment of any legislation. The Congress does
7 not operate under it. It is on that premise that all
8 these other special votes of the entire body elected to
9 sit, so there can be no extensions under this procedure.

10 THE CHAIRMAN: Section 17 of Article 14, deal-
11 ing with amendments is much more specific than Article 5
12 of the Federal Constitution. It says, Passed by three-
13 fifths of all the Members elected to each of the two
14 Houses.

15 Any further comment?

16 JUDGE ADKINS: I wonder if the Committee has
17 sought to collate this in the Constitution where it
18 occurs. Reverting to what Dr. Jenkins says, there are
19 clearly instances where there should be two-thirds of the
20 membership. Before we vote on this, we ought to have some-
21 body tell us of all instances where it should be significant.

1 In the next Report we are recommending that
2 the General Assembly may, by two-thirds vote of all Mem-
3 bers pass a declaration stating the Governor is in-
4 capacitated. Clearly in my judgment that should not be
5 less than two-thirds of the entire body, and I would
6 not want to see us inadvertently tie ourselves now to a
7 three-fifths with that question coming up at a later
8 time. If we are going to adopt a fraction now for the
9 entire Constitution, it seems to me we ought to have all
10 the instances laid before us.

11 THE CHAIRMAN: Yes, well, I had suggested this
12 debate deal with the three questions of amendments to
13 the Constitution overriding the Governor's veto and pass-
14 ing a bill that would take effect, notwithstanding the
15 petition for referendum, and take up secondly the question
16 of the other instances, and whether there should or should
17 not be uniformity.

18 It may be desirable to separate these three.
19 There may be some feeling that perhaps the same rule
20 shouldn't apply to those, and if so, we can put each to
21 a vote separately.

1 To answer Judge Adkins' question, Dr. Bard,
2 can you mention any others besides those you did mention,
3 impeachment?

4 DR. BARD: Expulsion of members, two-thirds;
5 and amendments to the Constitution is three-fifths, and I
6 don't know, Dr. Jenkins, you could make a pretty good
7 debate as to whether an amendment to the Constitution
8 is less important than, let us say the elimination of
9 three readings.

10 Actually it would be pretty difficult to set
11 up a good debate in that connection. My own feeling is
12 that Judge Adkins has a point. I believe it would be
13 important for us to enumerate all instances in this con-
14 nection.

15 THE CHAIRMAN: In order to make some progress
16 today, let me say that we will put up to vote the separate
17 vote on each, the four or five instances that have been
18 mentioned in discussion, so that we can see what we are
19 dealing with.

20 DR. BARD: These three or four, the three
21 readings, expulsion of members, amendments to the Consti-

1 tution, and referendum.

2 THE CHAIRMAN: And overriding the veto. These
3 are three instances here which have import. And then
4 there is a sixth mentioned by Judge Adkins coming in his
5 Report, and that is the question of gubernatorial dis-
6 ability.

7 DR. BARD: That is correct. Just to restate
8 it again, the only reason why, to answer Mrs. Bothe's
9 question, the only reason why we did not say we would like
10 to have this two-thirds in terms of those who are
11 present is because the Constitution does set that limita-
12 tion. In fact, this Committee did on another occasion.

13 THE CHAIRMAN: Mr. Miller?

14 MR. MILLER: Mr. Chairman, before voting, I
15 am not quite clear. Are we to vote on the basis of the
16 percentage of the elected membership, or may we have in
17 the alternative, on certain ones of these things, the
18 two-thirds of the Members present and voting?

19 THE CHAIRMAN: Well, I think perhaps the thing
20 to do is to put up the recommendation of the Committee,
21 general recommendation that the ratio whatever it is,
be based on membership rather than those present, and

1 see what the general feeling of the Commission is.

2 DR. BARD: I don't think that was our position,
3 our Committee position, Mr. Chairman. Our Committee
4 position was that more along the lines that Congressman
5 Miller has in mind, namely that whenever the fractions
6 were used throughout the Constitution, that the fraction
7 in terms of extraordinary action, it is our feeling that
8 extraordinary action was so extraordinary it really needed
9 two-thirds, and if there were an application that applied
10 to membership present that it would continue to apply
11 within this frame of reference.

12 We did not want to extend the concept of two-
13 thirds or three-fifths to harness it necessarily with the
14 total membership, to use it only as it applies, which is
15 your question.

16 THE CHAIRMAN: If that is the case, perhaps
17 we better put both questions with respect to each type of
18 situation, that is whether it should be ratio of the
19 total membership or ratio of those present, and if so, what
20 ratio.

21 DR. BARD: I would like to refer that to

1 Mr. Brooks, whether we have the authority at this point
2 to change some of the decisions made earlier in respect
3 to total membership. I remember on one or two occasions,
4 we talked about the passage of a bill by majority of
5 those present, and this body as a whole said that they
6 wanted it to be --

7 THE CHAIRMAN: No, I am not talking about that.
8 I am talking about only instances where an extraordinary
9 number is required.

10 DR. BARD: I see.

11 THE CHAIRMAN: Any further discussion?

12 Mr. Sykes?

13 MR. SYKES: Mr. Chairman, it seems to me that
14 there is a different strength to the policy behind the
15 requirement of a higher number in each of a great many
16 different instances. I would think the first question to
17 be put is whether there should be any uniformity at all,
18 and I am frank to say that I think there should not be.

19 Now, if there is not to be uniformity, then I
20 would question whether we should try to solve this problem
21 on the basis of abstract arithmetic. I think the amount,

1 the proportion that would be required in each case would
2 be better discussed in the context of the individual
3 Committee reports where you can assess the strength of
4 the policy involved in the light of all the flesh and
5 bones of each individual question.

6 I suggest that to the Chair as a method of
7 proceeding and maybe a suggestion of what votes to take.
8 I am not ready to vote on each individual item without
9 checking what the present constitutional provision is,
10 by seeing whether there is any overriding need for change;
11 and if there is no need for uniformity, then a great deal
12 of the argument for change would, it seems to me, to
13 lose its authority.

14 THE CHAIRMAN: Well, if we had unlimited
15 time, I think it would be desirable to do as you suggest.
16 The difficulty is that if we are going to have a draft
17 for the next meeting, the Committees which have not yet
18 submitted reports on the specific points here might not
19 have any guide or direction. I am not suggesting that we
20 try to cover every point that may be in the present Con-
21 stitution in which an extraordinary vote is required, but

1 only the four or five as to which the Committee can
2 advise us this afternoon. I am perfectly willing to
3 submit first the question whether there should be uni-
4 formity.

5 MR. CLAGETT: Mr. Chairman, I think from the
6 discussion we have had to date got it narrowed down
7 as to whether we would like to see the absolute figure,
8 that is of elected Members or whether we would like the
9 practice of the Federal Congress. If we narrow it there,
10 we can still go forward and debate with respect to the
11 percentage figure in the light of Mr. Sykes' recommenda-
12 tion.

13 THE CHAIRMAN: Well, that is what I first sug-
14 gested, but some indicated and Dr. Bard indicated that the
15 Committee feels that in some situations they may recommend
16 one thing and in others, something different; so we can't
17 proceed that way.

18 DR. BARD: May I ask, Mr. Chairman, Mr. Sykes
19 what extraordinary action would be less, some lesser
20 extraordinary that it would require a smaller fraction?

21 MR. SYKES: I can see, for instance, you would

1 want three-fifths of those present to put a law into
2 effect despite a pending referendum. That would be one
3 possible way of balancing your attitude toward referen-
4 dums on the one hand and the need for some extraordinary
5 activity on the part of the Legislature on the other.
6 I can see an argument for a sixty-six and two-thirds
7 per cent of the total membership in case of veto, over-
8 riding the Governor's veto on the theory you might want
9 to strengthen the Governor, and this accomplishes that.

10 My own feeling on all these things is that the
11 present machinery that we have in the Constitution for
12 each of the problems seems to have operated in a reason-
13 ably satisfactory way, and I would put the burden of proof
14 on those who advocate changes; and if the changes are
15 only theoretically advantageous, I would tend to say,
16 Let's stick with what we've got, and that is the kind of
17 thing I meant. You would have an argument on each point.

18 THE CHAIRMAN: Now, I want to submit first the
19 question of whether the Commission favors the Committee
20 recommendation that there be uniformity. Are you ready
21 to vote on that question, or is there any further discus-

1 sion of that question.

2 MR. SAYRE: This is on extraordinary measures?

3 THE CHAIRMAN: Extraordinary measures, whether
4 there should be uniformity in the provision as to the
5 ratio of vote required whenever an extraordinary vote is
6 required under the Constitution.

7 DR. BARD: May I make one final comment, that
8 is, that it would be possible under this two-thirds vote
9 to have something like 46 Members opposed to an extra-
10 ordinary action and the extraordinary action still take
11 place. So when we are talking about undue restrictions,
12 as you up these numbers which we have done by raising
13 the membership of both the Senate and the House of Dele-
14 gates, you still have a very large number that could be
15 block action.

16 This is the point that we are taking, and we
17 feel that if it is to be extraordinary, then it ought to
18 be under circumstances which safeguard the State. That is
19 the final point.

20 THE CHAIRMAN: Any further discussion on the
21 question of uniformity at this time? If not, we will put

1 the question. The question arises on the recommendation
2 of the Committee that in all instances where under the
3 Constitution an extraordinary vote will be required that
4 whatever that extraordinary vote be, it be uniform.

5 Ready for the question? All those in favor
6 of uniformity, signify by a show of hands.

7 Contrary? The motion is lost, 7 to 13.

8 Now, I think probably, although I really don't
9 know, I think probably we would save time on taking up
10 first the situations dealing with the Legislature where
11 an extraordinary vote would be required and consider
12 separately for each whether the vote be a proportion of
13 the total membership or of those present, and if so,
14 how many.

15 Dr. Bard, which one do you want to take up
16 first?

17 DR. BARD: I think under the circumstances, the
18 only thing for us to do is to vote on them. It seems to
19 me, if we are not going to be uniform, then we vote on
20 them in terms of the application, and as it is applied in
21 this document as we are going through. I don't see any

1 need for another vote.

2 MR. MILLER: Mr. Chairman, it seems to me that
3 it is important to decide the overall policy as to
4 whether these votes are to be by the elected membership
5 or whether we shall have them, or want them in individual
6 cases on the Members present and voting as in the Federal
7 System.

8 THE CHAIRMAN: Mr. Miller, I rather sense that
9 there was a considerable feeling in the Commission that
10 they might feel one way on some issues and a different
11 way on other issues; and I suggest we put the question
12 up as to each issue.

13 MR. MILLER: On both points?

14 THE CHAIRMAN: Both points.

15 MR. MILLER: On number and how?

16 DR. BARD: Yes, as it occurs.

17 THE CHAIRMAN: Mrs. Bothe? Has your Committee
18 considered it?

19 MRS. BOTHE: No.

20 THE CHAIRMAN: Then instead of doing as I
21 suggested, we will move ahead and consider each of these

1 extraordinary votes as they arise either in the Report of
2 this Committee or the other Committees.

3 DR. BARD: Then we shall move ahead in terms
4 of our Report. You will find in the back of our Report,
5 starting with the lettered pages, the various Sections,
6 and you will note that we will not be discussing some
7 of the Sections because they have been approved at
8 previous meetings. We have put it all together in the back
9 so you can follow those we will be discussing today.

10 Section 5, Within three months of an official
11 publication of the population figures. Mr. Chairman,
12 I don't know whether our procedure today shall be to
13 read this.

14 THE CHAIRMAN: I think it is desirable.

15 DR. BARD: Within three months of an official
16 publication of the population figures of the decennial
17 census of the United States, the Governor shall present
18 a plan of districting and legislative apportionment to
19 the General Assembly. If the General Assembly is not in
20 session at the time the Governor shall convene the General
21 Assembly in special session. The General Assembly shall

1 enact such plan as presented or as amended by it, or the
2 General Assembly shall enact its own plan. If four
3 months prior to the final date for the filing of candi-
4 dates for the next Statewide election occurring after
5 publication of such census figures a plan has not been
6 enacted into law, the plan as presented to the General
7 Assembly by the Governor shall become law. Upon petition
8 of any eligible voter filed no later than ten days after
9 the enactment of a plan, or after the final date for
10 action set forth above, whichever first occurs, the Supreme
11 Court of Maryland shall have original jurisdiction to
12 review the districting and legislative apportionment of
13 the State and to grant appropriate relief.

14 It is that last sentence which we have been
15 delegated to take care of in revision that you will want
16 to look at fairly carefully, the comment speaks for the
17 changes that we have made.

18 THE CHAIRMAN: Any questions? Any comments?

19 MR. SAYRE: A question.

20 THE CHAIRMAN: Mr. Sayre?

21 MR. SAYRE: How is the word, grant, to be

1 interpreted?

2 THE CHAIRMAN: Where?

3 MR. SAYRE: In the very last sentence.

4 DR. BARD: This would mean that, as we under-
5 stand it, that the Supreme Court would have the power to
6 either review a plan that had been in existence or if
7 no plan were in existence, grant would permit it to
8 formulate one.

9 THE CHAIRMAN: I don't think lawyers would have
10 any difficulty with that phrase. It is a customary
11 phrase, Mr. Sayre, if I follow your question.

12 MR. SAYRE: Well, let's say there would have been
13 testing as to its constitutionality, does that mean the
14 draft does have the power to come up with his own proposal
15 which will be law, is that right?

16 THE CHAIRMAN: If it decides it has that power,
17 I would say so. It has decided that under the present
18 Constitution.

19 MR. SAYRE: That is what I thought. I thought
20 our idea was if there was no other course of relief that
21 it would have that power, and I don't know that this means

1 that exactly.

2 DR. BARD: We think it does. If there is
3 nothing there, then we think it does have the power to
4 actually establish a plan.

5 THE CHAIRMAN: Mr. Gentry?

6 MR. GENTRY: My question would be this: If
7 the Legislature does its duty and enacts a plan and no
8 petition is filed, could the Supreme Court still review
9 that without any, on its own initiative? It seems to
10 say for after the final date for action set forth, and
11 it doesn't say there be no action, then the Supreme Court
12 shall have original jurisdiction.

13 THE CHAIRMAN: Wouldn't that be clarified if you
14 took the comma out after the word, plan, clarify it for
15 you? I am assuming, Dr. Bard, that the Committee means
16 by the parenthetical phrase, or after the date, merely to
17 be giving an alternate date.

18 DR. BARD: That is correct, and the commas
19 might, deleting the comma might be helpful.

20 MR. GENTRY: What you mean, the final date,
21 there be no action taken. You don't mean, final date there

1 having been action taken.

2 DR. BARD: It could well be that the final date,
3 action having been taken, an eligible voter filing in
4 connection with --

5 MR. GENTRY: I don't mean that. Final action
6 taken.

7 DR. BARD: And there being no action, that
8 is correct.

9 DR. MICHENER: What we had in mind, there is
10 a plan no matter whether by the Legislature, by the
11 Governor upon filing of a petition which is an absolute
12 prerequisite, the Supreme Court would have jurisdiction
13 to review that plan.

14 MR. GENTRY: I think you have left it a little
15 up in the air, on the requirement that a petition be
16 filed to get it in the Supreme Court.

17 DR. MICHENER: It would always require a
18 petition.

19 MR. GENTRY: You haven't said that.

20 DR. BARD: Upon petition of any eligible voter.

21 MR. GENTRY: Then you go off, Or after

1 final date. Maybe taking out the comma would do it.

2 THE CHAIRMAN: Any further question or comment?

3 JUDGE ADKINS: I have this question, it is
4 probably my own inability to read this language. It
5 is quite clear in everybody's mind that the Governor has
6 the right to veto any amendment, any plan which the
7 General Assembly should propose as an alternative to his
8 plan, or does this give the General Assembly a new way
9 of enacting a law without reference to the gubernatorial
10 veto?

11 THE CHAIRMAN: Dr. Bard, in earlier discussions,
12 I think reports of your Committee, but maybe of the
13 Executive Department Committee, someone suggested that when-
14 ever we mean to refer to action by the General Assembly
15 that is subject to gubernatorial veto, that we should
16 say General Assembly by law shall do this or that, carry
17 that thought. Maybe that would be appropriate here.

18 DR. BARD: We are saying subject to guber-
19 natorial veto.

20 THE CHAIRMAN: This is another matter.

21 DR. BARD: Our Committee thought if the plan

1 fulfilled all the requirements, I think that ought to be
2 opened up to the Commission. If the Commission feels
3 otherwise --

4 THE CHAIRMAN: You might make that clear.

5 JUDGE ADKINS: I don't think your language is
6 clear because later on you say enacted into law.

7 MR. CLAGETT: Is the question now we are
8 talking about, if there is a difference between the
9 Governor's plan and the General Assembly's plan?

10 THE CHAIRMAN: No, the question is whether or
11 not the General Assembly in enacting its plan can enact
12 a plan that is not subject to veto.

13 MR. CLAGETT: If it enacts the Governor's plan,
14 then we are talking about an absurdity. If it enacts
15 one which is completely different and contrary to what
16 the Governor wants, then we have a point.

17 THE CHAIRMAN: So that is the question. Let's
18 find out first what the Committee intends to recommend;
19 then we can deal with the amendment.

20 DR. BARD: The logic would be against permitting
21 the Governor's veto because otherwise the Governor would

1 have his say anyway, and the intent here --

2 THE CHAIRMAN: Subject to being overridden.

3 DR. BARD: Right. The intent here is to urge
4 the General Assembly to come up with a good plan. That
5 is the intent. The moment the confrontation takes place,
6 the Governor could possibly have his own view. At least,
7 this was our intention.

8 THE CHAIRMAN: The recommendation of the Com-
9 mittee, then, as I understand it, is that the plan to be
10 submitted to the General Assembly is to be submitted by
11 it without being subject to gubernatorial veto?

12 DR. BARD: Of course, it would be subject to
13 review by the Supreme Court.

14 THE CHAIRMAN: I understand. Mr. Case?

15 MR. CASE: Mr. Chairman, in discussing this
16 idea some time ago, I thought it would be based on the
17 idea of a strong executive and the work that could be
18 done by and for him in proposing the plan. You will re-
19 call that there was some conversation at the Easton
20 meeting about a blue ribbon commission or committee being
21 appointed by the Governor who would then take that work,

1 and it would be that work product primarily which would
2 be the Governor's plan. So I think there is every reason
3 to favor in this situation the Governor's plan over that
4 which might be concocted by the Legislature. The legis-
5 lative process in this whole scheme, as I visualize it,
6 was really a matter of check and balance.

7 If the Governor's plan based upon the best
8 advice he could get is really so cockeyed to the Legis-
9 lature that it isn't acceptable, then of course, the
10 Legislature could modify it, and if the Governor felt
11 strongly about it, he could veto it, and the Legislature
12 could then go ahead and pass it over his veto if it could.
13 But the whole idea of this proposal, the whole corner-
14 stone of it, namely, that if the Legislature does not go
15 then the Governor's plan does become final, the whole
16 meat of this idea is the strong executive and the advice that
17 he would get in proposing his plan in the first place.
18 Therefore, it seems to me that if the Committee proposes
19 that the plan not be subject to the Governor's veto, at
20 least as far as I am concerned, it weights down the
21 theory of the proposal.

1 DR. BARD: May I answer that?

2 THE CHAIRMAN: Yes.

3 DR. BARD: You will remember if you go back in
4 the minutes, Mr. Case, that at one time this Committee
5 thought of a blue ribbon committee, and the Commission
6 itself spoke rather strongly on the fact that the key to
7 the plan was the authority of the Legislature, the real
8 key to this was the legislative decision.

9 Now, if you want to go back to an earlier deci-
10 sion which this Commission has made, I think we might well
11 open it up, but it was our feeling that this Commission
12 felt rather strongly, and this portion that you are now
13 referring to had been settled at the last meeting, desired
14 the original jurisdiction and authority to lie with the
15 Legislature.

16 On the other hand, if the Legislature were not
17 so stirred to do this, then the Governor would come in,
18 in reverse of what you are saying. I might add earlier,
19 early in our deliberations our thoughts were along your
20 lines, but this Commission stopped it.

21 MR. CASE: Dr. Bard, the whole idea was

1 engendered at Easton as a result of long debate of which
2 I played some part, and I know how I felt then and how I
3 feel now. It is, very frankly, that the Governor, well,
4 exactly what I said -- the idea, I think you have missed
5 the point here, in getting the Governor's plan approved,
6 get it off dead center. It is a proposal of motion rather
7 than a proposal of substance. It never was my idea that
8 this whole matter should be turned over in the first
9 instance to the Legislature.

10 DR. BARD: This Committee stood for a blue
11 ribbon committee earlier.

12 THE CHAIRMAN: Mr. Clagett?

13 MR. CLAGETT: Mr. Chairman, let us assume for
14 the moment that the Governor does come up with a good
15 plan. The General Assembly then decides they don't like
16 it, and they come up with their plan. The Governor
17 then vetoes the General Assembly plan, can't the General
18 Assembly then override the Governor's veto?

19 THE CHAIRMAN: That would be possible under
20 what Mr. Case suggests, and under what Dr. Bard is suggest-
21 ing, it would not be necessary. Nobody questions the

1 right of the Legislature to override the veto if it is
2 to be subject to veto.

3 MR. CLAGETT: So if we provide it not be sub-
4 ject to veto, then it would become law on petition to the
5 Supreme Court?

6 THE CHAIRMAN: Yes.

7 MR. CLAGETT: And we would get some action with-
8 out an intolerable waste of time.

9 THE CHAIRMAN: Mr. Sayre?

10 MR. SAYRE: My interpretation is the way
11 Mr. Case stated it, and the way we have in the minutes
12 at Easton, it was moved by Mr. Case, seconded and unan-
13 imously resolved that that Section dealing with reappor-
14 tionment should provide within a specified period after
15 the publication of the results of the decennial census,
16 the Governor must call the Legislature into session and
17 present a redistricting plan. There was no reference to
18 the veto, but I am sure that was implied.

19 THE CHAIRMAN: Mr. Martineau?

20 MR. MARTINEAU: Mr. Chairman, it seems to me
21 the way to handle this problem would be to require the

1 legislative proposal to be adopted by either three-fifths
2 or two-thirds without getting into that, in the first
3 instance to override what the Governor has proposed, and then
4 you wouldn't get involved in the problem of coming back
5 later on and having the Legislature override a possible
6 gubernatorial veto.

7 To satisfy both here and not waste any time
8 in getting this plan either adopted or not adopted
9 by the Legislature, to require that the plan be adopted
10 by a higher vote and not of it subject to veto.

11 DR. BARD: That is okay.

12 THE CHAIRMAN: Any further discussion?

13 JUDGE ADKINS: It prevents legislative re-
14 finements on what might otherwise become a good plan.
15 It becomes on a take-it-and-leave-it basis. I think the
16 Governor ought to have the veto, but the Legislature
17 ought to have the right of amendment.

18 THE CHAIRMAN: Mr. Miller?

19 MR. MILLER: The only thought I have, Mr. Chair-
20 man, is that if we did have laws passed by some peculiar
21 device which indicates passing up the veto in certain

1 cases, we are really confusing the procedure. It seems
2 to me very simple that if the legislative plan is agree-
3 able to the Governor, he can sign it. If he doesn't
4 like it, he can veto it, and if they override his veto,
5 it still becomes law unless it is unconstitutional. So
6 I don't see any reason for having anything to go through
7 the Legislature that is beyond the veto.

8 THE CHAIRMAN: Any further discussion?

9 DR. BARD: We wouldn't hold too strongly on
10 the veto if you want to include it.

11 THE CHAIRMAN: I want to take a vote and move
12 on. Any further discussion on it? Then, the question
13 will arise on whether or not the action by the Legislature
14 under Section 5 is to be subject to veto or is not to be
15 subject to veto since the Committee had recommended that
16 it not be subject to veto a vote -- will be a vote that
17 the legislative action be not subject to veto. A vote
18 Nay will be a vote that the legislative action be subject
19 to veto in the normal course. You ready for the question?

20 All in favor, signify by saying Aye, a vote
21 Aye is a vote for action not subject to the veto. Those
opposed?

1 (A chorus of Noes.)

2 THE CHAIRMAN: The Noes have it. Now, that
3 requires a redrafting of that part of the Section. Is
4 there any further comment as to Section 5? I have a
5 question that troubles me a little bit with respect to
6 the last sentence. Is it intended that the Supreme Court
7 under this sentence is to have a political as well as
8 judicial power, by which I mean that the Court is to have
9 the power to redraw the lines in accordance with what it
10 might think is politically desirable rather than merely
11 be limited to determining whether the gubernatorial or
12 legislative action is in conformity with constitutional
13 requirements.

14 DR. MICHENER: The other thing, of course, is
15 there may be no action at all, so the Court has to do this
16 of necessity. The Governor has not presented a plan,
17 and the Legislature has not adopted one.

18 THE CHAIRMAN: I can understand that, but I
19 did not understand the original suggestion that was made
20 at Easton that the political power was to be conferred
21 upon the Court. I am not sure that this sentence does

1 because it depends on what meaning you are giving to the
2 words, appropriate relief.

3 I would like to know what the Committee in-
4 tended. I take it from your answer that the Committee
5 intended that the Supreme Court was to have both the
6 political as well as the judicial power in this instance.

7 MR. CLAGETT: You remember the question did
8 come up that when the Supreme Court took jurisdiction,
9 it would have a full and complete jurisdiction to grant
10 any and all relief. So I would interpret, appropriate,
11 to be any and all and include the redrawing of the lines.

12 THE CHAIRMAN: The question I put up is not
13 quite that. What I am thinking of is the situation where
14 the Governor or the Legislature may have presented a plan
15 that is constitutionally good but in drawing the lines,
16 the Supreme Court or anybody else may differ as to whether
17 a particular line should be here or there. Now, is it
18 intended that the Supreme Court shall have jurisdiction
19 only to review to determine that the plan does or does not
20 meet the constitutional requirements or go beyond that and
21 draw a plan which it thinks is politically expedient?

1 Mr. Sayre?

2 MR. SAYRE: Mr. Eney, the way I thought we
3 had interpreted this was to leave up to the Court, number
4 one, as to whether or not it is constitutional and that
5 if it were not, it could take whatever action it deemed
6 appropriate, meaning that if there is time, it can toss
7 it back to the Legislature. If there is not time, it can
8 draw its own line.

9 THE CHAIRMAN: I have no difficulty with that,
10 but suppose the Court decides that the plan is consti-
11 tutional?

12 MR. SAYRE: Then I don't think we intended
13 that it have that power.

14 THE CHAIRMAN: This is the question I raised.

15 Mr. Miller?

16 MR. MILLER: As one Member of the Committee,
17 it never occurred to me that the Court would have any
18 jurisdiction except in the event that it had no plan it
19 considered constitutional before it.

20 DR. BARD: Right.

21 MR. MILLER: In which case, it could draw a

1 new plan. But if the legislative plan or the Governor's
2 plan is constitutional, it wasn't my thought that the
3 Court would have anything to do with it.

4 DR. BARD: Right.

5 THE CHAIRMAN: Mr. Bond?

6 MR. BOND: I would like to ask a question on
7 this. Is it contemplated by any Member of the Commission
8 that the Court would have original jurisdiction without
9 a petition before it?

10 THE CHAIRMAN: No.

11 MR. CLAGETT: Mr. Chairman, I have one other
12 question. Suppose the Governor has drawn up a very good
13 plan, but let's suppose the General Assembly comes up
14 with a better plan and both of them are constitutional,
15 then it gets petitioned eventually to the Supreme Court,
16 cannot the Supreme Court, having taken jurisdiction, blend
17 the two plans, if it does not involve actual change of
18 boundary lines?

19 THE CHAIRMAN: That is part of the question
20 that I suggest to you, that if it is intended that this
21 last sentence give the Supreme Court jurisdiction only to

1 grant relief if it determines the plan before it is not
2 constitutional, that the Section should so state. As
3 for instance, by saying the Supreme Court shall have
4 original jurisdiction to review the districting and legis-
5 lative apportionment of the State, and if it find the
6 statement is not in conformity with the Constitution, to
7 grant appropriate relief.

8 DR. BARD: Good correction.

9 THE CHAIRMAN: But I am not clear as to what
10 the Committee intends.

11 DR. BARD: Just what you said.

12 THE CHAIRMAN: Is there any disagreement with
13 that view?

14 MR. CLAGETT: I disagree with that view. I
15 understood and did so vote that we were, when the Supreme
16 Court took jurisdiction just as the United States District
17 Court took jurisdiction, it could come up with a plan,
18 and it would be hoped that that plan would certainly be
19 constitutional as well as appropriate; and my understand-
20 ing of the word, appropriate, was that it had full and
21 complete original jurisdiction and original has got to

1 mean just that.

2 THE CHAIRMAN: No, I don't think so. Original
3 simply means it is not appellate, I think, in this sense,
4 but do you advocate the position that if the plan or
5 plans before the Court do meet the constitutional standards
6 that the Court nevertheless should have the power to
7 write a new plan?

8 MR. CLAGETT: Yes.

9 THE CHAIRMAN: Does anyone else share the view?
10 If so, we will put it to a vote. You seem to stand alone.

11 DR. BARD: When you use the word, constitutional,
12 you are referring to the United States Constitution
13 as well as the Maryland State Constitution?

14 THE CHAIRMAN: I assume you would have to.

15 DR. BARD: Then you said, according to this
16 Constitution.

17 THE CHAIRMAN: I am sorry.

18 DR. BARD: We would like for it to say --

19 THE CHAIRMAN: I did not mean that more or less
20 offhand language.

21 DR. BARD: I realize that.

1 THE CHAIRMAN: Mr. Sykes?

2 MR. SYKES: I would like to suggest one
3 practical problem that might arise under the 10-day
4 limitation, that is anybody who would like the Federal
5 Court to review the constitutionality of a State plan
6 could defer the filing until 11 days, and then go into
7 the Federal Court on the grounds of constitutional rights
8 have been violated, and the State provides no appropriate
9 form or procedure for vindicating the constitutional
10 rights. That would also prevent the Federal Court from
11 staying its hand and referring the thing to the Maryland
12 Court because Maryland provides no machinery whatever for
13 accepting the reference on any such absenteeism. I ques-
14 tion under those circumstances whether a fixed time limit
15 should be written into the Constitution or whether the
16 question of timeliness should be determined on general
17 equitable principles.

18 THE CHAIRMAN: Dr. Bard or Dr. Michener?

19 DR. MICHENER: The Committee felt it was impor-
20 tant to have a fixed and early date to get this settled
21 and to speak to your question in particular, such a person

1 cannot prevent hundreds of other folks from filing peti-
2 tions. There have to be uniform decisions before the
3 situation could arise. Anyone can file a petition in the
4 District Court's jurisdiction.

5 MR. SYKES: I am not sure that answers the
6 question. I don't know what the answer is.

7 THE CHAIRMAN: I think Mr. Sykes' point would
8 be that if there was only one person or one group who
9 sought to overturn the plan on constitutional grounds
10 and that person or group wanted Federal Court action,
11 he could insure it by going beyond the deadline that you
12 fix in the statute, and he raises the question of whether
13 the deadline is more important than insuring that the
14 State Court have first crack.

15 DR. MICHENER: I would doubt the situation would
16 arise whether only one person would be upset by a redis-
17 tricting system.

18 MR. MARTINEAU: I think we have pretty good
19 of
evidence/that in the constitutional districts.

20 THE CHAIRMAN: You want to submit the question,
21 Mr. Sykes?

1 MR. SYKES: I would move that the specific
2 time limit be deleted, and the word, time, be inserted
3 in front of, petition, instead. I am afraid that this
4 gives a possibility for a tactical choice to Federal
5 courts over the State courts and another instance of sub-
6 ordination of State to Federal power by people who are
7 wisely counseled and who feel there may be procedural
8 or other advantages in getting the case into Federal
9 Court and keeping it completely out of the State. So I
10 make the motion.

11 THE CHAIRMAN: Is there a second?

12 MR. CLAGETT: I second it.

13 THE CHAIRMAN: Mr. Sykes, without restating
14 your reasons, would you elaborate on the second point of
15 your part a little bit for the benefit of the Commission
16 who are not lawyers and perhaps not familiar with the
17 legal principle announced by the Supreme Court to which
18 you refer?

19 MR. SYKES: You mean the extension point?

20 THE CHAIRMAN: The question of whether the
21 Federal courts would have jurisdiction if there were a

1 remedy still available in the State courts and otherwise.

2 MR. SYKES: Well, the Federal courts are
3 charged with vindicating rights under the Federal Con-
4 stitution and in the last congressional redistricting
5 case which Al Scanlan and I were both in, the Federal
6 courts redistricted the State for the purpose of congres-
7 sional representation.

8 In other States, such as in Illinois, the
9 Federal Court redistricted the State in conjunction with
10 the State's highest court, and there is a doctrine in
11 the Federal law that says on matters of particular concern
12 to States, the Federal Government will stay its hand and
13 give the State an opportunity to take whatever action the
14 State can take to assure a result consistent with State
15 processes that is also consistent with the requirements
16 of the Federal Constitution.

17 They don't want to rule on a Federal constitu-
18 tional question until the State proposes making it ab-
19 solutely mandatory to so rule. Now, what you have in this
20 situation is if a case is filed in the Federal Court, the
21 Federal Court may stay the proceedings until the State

1 Court has had a chance to pass upon it.

2 If the State Court has such a chance, but if
3 the State Court's jurisdiction is limited so that there
4 is nothing the State Court can do to pass on the problem
5 because as here the 10 days expire, then the Federal
6 Government will have to go ahead and take complete juris-
7 diction and apply its own procedure and decide the case
8 on its own. Does that answer the question?

9 THE CHAIRMAN: Yes; any further comment?

10 MR. HAILE: I don't recall any situation where
11 there was a time limit on a person's right to resort to the
12 courts the question of constitutionality of a law passed
13 by the Legislature. The only purpose of this sentence
14 was to go give the Supreme Court original jurisdiction. I
15 think by eliminating the words, no later than 10 days,
16 we still are accomplishing our purpose.

17 THE CHAIRMAN: Any further comment?

18 DR. BARD: I thought Mr. Sykes had a substitute
19 phrase there.

20 THE CHAIRMAN: Yes, his motion was to substi-
21 tute after the word, upon, and before the word, petition,

1 the word, timely, and to strike out the words, filed
2 no later than 10 days after the enactment of the plan or
3 after the final date for action set forth above, which-
4 ever first occurs.

5 MR. CLAGGETT: What does that mean now? How
6 long a time does timely mean?

7 THE CHAIRMAN: Whatever the Court would decide.

8 MR. CLAGGETT: Very well.

9 THE CHAIRMAN: Any further discussion? You
10 ready for the question? The question arises on the motion
11 to amend the last sentence of Section 5 to insert the word,
12 timely, after the first word, upon, and to delete the
13 words, filed no later than 10 days after the enactment of
14 a plan or after the final date for action set forth above
15 whichever first occurs.

16 As thus amended, that sentence would read,
17 upon timely petition of any eligible voter, the Supreme
18 Court of Maryland shall have original jurisdiction to
19 review the districting and legislative apportionment
20 of the State and to grant appropriate relief subject to
21 the amendment in the latter phrase that was heretofore

1 moved. Are you ready for the question? Those in favor
2 of the motion, please signify by a show of hands.

3 The motion is carried, 18 to nothing.

4 Now, Dr. Bard, you are going to draft appro-
5 priate language in the last two lines?

6 DR. BARD: Yes.

7 THE CHAIRMAN: Any further discussion? If not,
8 we move to the consideration of Section 6.

9 DR. BARD: Section 6, marked a change in the
10 language only. Instead of saying, the Members of the
11 Senate and the House of Delegates, we now say, the Members
12 of the General Assembly. No significant change in 6.

13 THE CHAIRMAN: Any question or comment? If
14 not, we proceed to consideration of Section 7.

15 DR. BARD: Section 7.

16 THE CHAIRMAN: Is this the place where there
17 is some material left out?

18 DR. BARD: Yes, the commentary has been deleted,
19 and the comment that is noted here belongs to Section 10
20 which you will find back of the book. Let me read the
21 comment on Section 7.

1 THE CHAIRMAN: What is omitted after the typing
2 of Section 7 is the comment on Section 7 and Section 10,
3 the comment at Page 4 pertains to Section 10.

4 DR. BARD: Yes, sir. Suppose I read the comment
5 on Section 7. This Sections reads with the exception of
6 the requirement for two-thirds vote, and please note that,
7 rather than the three-fifths vote to extend the regular
8 session as it was reviewed and approved by the Commission
9 in its August meeting, the Committee made the change
10 pursuant to its recommendation that all extraordinary
11 majorities be set at two-thirds. Now, since the Committee
12 lost that overriding recommendation, you will want to look
13 at the two-thirds.

14 Apart from that we embodied everything that
15 was recommended at the last meeting of the Commission.
16 Suppose I now read Section 7.

17 The General Assembly may continue its session,
18 so long as in its judgment the public interest may require,
19 for a period not longer than seventy days in each year;
20 provided however, that by a two-thirds vote of each House
21 a session may be extended for an additional period not

1 longer than thirty days in each year.

2 The Commission has already agreed to the ex-
3 tension. The governor may convene the General Assembly in
4 special session at any time. That is not new. Major
5 changes that embodied from three-fifths to two-thirds
6 in connection with extending the session.

7 THE CHAIRMAN: Any comment? Mr. Martineau?

8 MR. MARTINEAU: Mr. Chairman, I wonder at the
9 advisability of leaving in language as, so long as in its
10 judgment the public interest may require. That is
11 really superfluous.

12 DR. MICHENER: That was discussed in Committee
13 meeting.

14 DR. BARD: We agree that it is superfluous,
15 but Mr. Case, would you like to comment?

16 THE CHAIRMAN: Mr. Bond?

17 MR. BOND: Is this two-thirds of the Members
18 present or two-thirds?

19 THE CHAIRMAN: Before you get to that, let's
20 dispose of this other. The suggestion is made that in
21 the second and third lines, the phrase, so long as in

1 its judgment, the public interest may require, could be
2 omitted. Is there any further comment or discussion?

3 DR. BARD: We, too, feel that it is superfluous.

4 THE CHAIRMAN: Mr. Miller?

5 MR. MILLER: I think it is desirable to have
6 it there. It doesn't often happen, but if the Legislature
7 wanted to adjourn in 50 days, I think it ought to be in
8 position to do it.

9 THE CHAIRMAN: That would be permitted.

10 DR. BARD: Not longer.

11 THE CHAIRMAN: It simply would be deleting
12 from the Section any statement of a reason for the action.
13 It wouldn't affect the action. Any further comment?
14 The Committee then, I understand, wants to delete the
15 phrase, so long as in its judgment the public interest
16 may require?

17 DR. BARD: If we be so permitted.

18 THE CHAIRMAN: Any objection to that?

19 All right, consider that deleted. Now, Mr.
20 Bond, as to the two-thirds question.

21 MR. BOND: I was just asking whether two-thirds

1 of the Members present on the floor at some period or
2 two-thirds of the elected Members of the House or two-
3 thirds Members of the Legislature.

4 THE CHAIRMAN: What is intended by the Committee?

5 DR. BARD: An earlier decision of this Com-
6 mission, we got the feeling that it meant of each House,
7 not those present.

8 THE CHAIRMAN: The whole membership.

9 MR. BOND: I don't think the language is
10 specific on that point.

11 THE CHAIRMAN: We will have to put the question
12 up whether it is two-thirds or three-fifths.

13 Mr. Della?

14 MR. DELLA: Now, we revert back to the three-
15 fifths conception, and this would be changed from two-
16 thirds to three-fifths?

17 THE CHAIRMAN: No, we have two questions to put
18 up to a vote, whether it should be a ratio of the whole
19 membership or those present, and if so, what should it
20 be? That is what we are discussing now.

21 MR. BOND: I should think it should be a two-

1 thirds, whatever fraction the Commission wants, of the
2 entire Legislature, not of those present.

3 DR. BARD: This is the way we wrote it.

4 THE CHAIRMAN: Any further discussion? All
5 right, then the first question to be put up is the ques-
6 tion of whether the ratio, whatever it may be, should
7 be a percentage of the whole membership, the total elected
8 membership, or the percentage of those present. The
9 Committee recommends that it be a percentage of the
10 whole membership; a vote Aye is a vote in favor of the
11 ratio of the whole membership, and a vote No would be a
12 vote for the percentage of those present. Ready for the
13 question? Those in favor of the Committee's recommenda-
14 tion that it be a percentage of the whole membership,
15 signify by a show of hands.

16 Contrary? The motion is carried, 17 to 1.
17 Now, the next question to consider is whether the ratio
18 should be two-thirds or three-fifths, or some other number.
19 Is there any further discussion of that question?

20 DR. BARD: The only thing I would like to say
21 is, we felt it was extraordinary. However, I don't want

1 to go back to the other question. The Commission has
2 felt that there are two kinds of extraordinary actions,
3 which kind this is, I think, is the question you are
4 voting on.

5 MR. DELLA: I think I was going to say the
6 same thing. If this would be an extraordinary situation
7 to a great degree, then I think it should come under the
8 three-fifths category rather than two-thirds.

9 THE CHAIRMAN: Any further discussion? Anyone
10 suggest a ratio other than two-thirds or three-fifths?
11 Ready for the question. The Committee's recommendation is
12 for two-thirds, a vote Aye would be a vote in favor of
13 two-thirds; a vote No would be a vote in favor of three-
14 fifths. This is in each instance a percentage of the whole
15 membership, entire elected membership. You ready for the
16 question? A vote Aye, two-thirds, those in favor, signify
17 by a show of hands.

18 Contrary? The motion is carried, 14 to 5.
19 It remains at two-thirds.

20 Dr. Bard, any further question on this Section?

21 DR. BARD: No, sir.

1 THE CHAIRMAN: Any further comment?

2 DR. BURDETTE: May I ask the Chairman, is the
3 Committee satisfied with getting the Legislature in ses-
4 sion at the same time? Terms begin under Section 6 on
5 the third Wednesday January next following their election,
6 but unless a Legislature prior to the adoption of this
7 Constitution fixes the time for a meeting, I don't really
8 see any way of getting them in session except by call of
9 the Governor. Is this intentional?

10 THE CHAIRMAN: You mean for the first session
11 or every session?

12 DR. BURDETTE: If they don't fix a law, it
13 may be every time. I may be mistaken. In glancing over
14 the document, I don't see any time for them to convene
15 except as otherwise provided for by law.

16 THE CHAIRMAN: Do you understand Dr. Burdette's
17 question, Dr. Bard?

18 DR. WINSLOW: I just prompted Mr. Burdette to
19 raise the question. At one point in deliberation of this
20 Committee, it appeared the session was to begin on the
21 third Wednesday of January and continue as long as it

1 pleased. That, continued as long as it pleased, got
2 eliminated, and I am afraid the date got eliminated at
3 the same time, and I think this is perhaps an oversight
4 that the date of the session was not included in this
5 Section that we have just dealt with.

6 THE CHAIRMAN: Since so much hinges on this
7 presentation of the budget and many other things, should not
8 the Constitution fix the opening date at least at the
9 beginning of the annual session?

10 DR. BARD: I would think so, yes.

11 THE CHAIRMAN: Would the Committee want to make
12 a recommendation that it be the beginning of the terms
13 of the Members elected?

14 DR. BARD: I would think so, since it is now
15 clarified.

16 MR. BROOKS: That has been the clear intent
17 all the way through.

18 DR. BARD: It has been the intent, but you
19 would think an actual statement of it would be authorized.

20 MR. MINDEL: It now so provides. Section 14
21 says, the General Assembly shall meet on the third Wednes-

1 day of the following January.

2 THE CHAIRMAN: I take it the Committee would
3 amend Section 7 to provide that the annual session would
4 begin on the third Wednesday of January of each year; is
5 that correct, Dr. Bard?

6 DR. BARD: Yes.

7 DR. BURDETTE: Why wouldn't the Committee be
8 willing to carry the language unless otherwise provided
9 by law so if we change the whole budget structure in
10 Maryland, we wouldn't have to amend the Constitution?

11 THE CHAIRMAN: Dr. Bard, your nod of the head
12 doesn't get in the record.

13 DR. BARD: Dr. Winslow, since you put this
14 in motion, where have you been on this question, since
15 you have put in this motion, how do you feel about that?

16 DR. WINSLOW: I feel it should go in the first
17 line of Section 7, which would say, the General Assembly
18 shall meet on the third Wednesday of January or as other-
19 wise provided by law and may continue its session so long
20 as --

21 DR. BARD: Shall convene?

1 THE CHAIRMAN: Well then, I take it that the
2 recommendation of the Committee would be to amend Section
3 7 to provide that, the General Assembly should convene
4 on the third Wednesday in January each year unless other-
5 wise provided by law. Is that correct, Dr. Bard?

6 DR. BARD: That is correct.

7 THE CHAIRMAN: Any objection? If not, we will
8 consider the Section as so amended.

9 DR. BARD: I am sorry about Section 10 not
10 appearing on Page 4, but if you look on Page C --

11 THE CHAIRMAN: Just a second. Is there any
12 further question by anybody with respect to Section 7?

13 Mr. Sayre?

14 MR. SAYRE: This is just a question, I interpret
15 Section 7 not to include year round meetings of committees
16 if that could be determined, has that been determined?

17 THE CHAIRMAN: Any comment, Dr. Bard?

18 DR. BARD: The recorder had my ear for the
19 meetings.

20 THE CHAIRMAN: Mr. Sayre says he would inter-
21 pret Section 7 not to prevent committees of the Legislature
meeting at any time in the year. Do you concur?

1 DR. BARD: We certainly concur with that, yes.

2 THE CHAIRMAN: Any further comment or question as to
3 Section 7? If not, proceed to Section 10.

4 DR. BARD: If you look at Section C, you will
5 find Section 10 stated. It reads, Any vacancy in the
6 General Assembly shall be filled by appointment by the
7 Governor, provided, however, that a party member shall be
8 succeeded by a member of the same party, and provided
9 further that the person so appointed shall serve only
10 until the next biennial general election, at which time
11 any remaining portion of the unexpired term shall be
12 filled by election.

13 Now, the commentary makes clear the fact we
14 covered this at the last meeting. I would like you to
15 note the wording. This means that if a person who is
16 registered as an Independent and is elected, then the
17 Governor has the privilege of appointing one of his choice
18 because he is not a party member, and we have to take care
19 of that situation, and we felt that this took care of it;
20 and secondly, you will note that the individual serves
21 until the next biennial general election, which would be

1 the next congressional election, not necessarily guber-
2 natorial.

3 THE CHAIRMAN: Any question? Any comment?

4 DR. JENKINS: Dr. Bard, what happens under
5 this provision if, let's say the next general election is
6 November 5. A Member dies on October 5, and there is not
7 time to get him in the mechanics of the election.

8 THE CHAIRMAN: The practical answer is the
9 Governor wouldn't appoint.

10 JUDGE ADKINS: That isn't the question. The
11 question is, how do you get somebody on the ballot?
12 Suppose he doesn't appoint?

13 THE CHAIRMAN: Dr. Bard?

14 DR. BARD: Dr. Winslow will comment on this.

15 DR. WINSLOW: I think the appointment would have
16 to be made early enough so that the machinery of the
17 general election could be put into operation. In other
18 words, that if it were October 5 or November 5, this is
19 an impossibility because you can't get his name on the
20 ballot. I think the calendar of the election would take
21 care of this.

1 THE CHAIRMAN: Dr. Winslow, Judge Adkins'
2 question was a little beyond that, and he suggests
3 Dr. Jenkins' question was that irrespective of appoint-
4 ment, how would one who desired to get on the ballot
5 get on the ballot? I take it that the language as
6 drafted, he could not because there could not be any
7 mechanics by which one could get on the ballot unless and
8 until there had been an appointment by the Governor under
9 the Section as drafted.

10 DR. BARD: This is what we intended. We have
11 a feeling that if anything was to occur under conditions
12 of this sort, the Governor's appointment, at least this
13 is my feeling, the Governor's appointment would tend to
14 be a better one than one that might be rushed through
15 with none of the possibilities because there would be
16 one day, let us say, involved in there, too late for the
17 machinery to come into being.

18 DR. JENKINS: I think this is a legal question.
19 It may provide a basis for litigation.

20 THE CHAIRMAN: It seems to me that under the
21 language as written, if the Governor made an appointment

1 five days before the election, the person served for five
2 days, and the office is vacant, he can make another
3 appointment after the election. Is that what is intended,
4 Dr. Winslow?

5 DR. WINSLOW: I should think so; otherwise the
6 machinery for general elections could not apply. You
7 would have a vacancy.

8 THE CHAIRMAN: Dr. Burdette?

9 DR. BURDETTE: I would so construe it, but
10 myself, I think I would have written this again without
11 final language after semicolon, and provided further that
12 the vacancy, or the remainder of the term should be
13 filled at the next biennial general election. I am not
14 using exact language, but this would take care of the
15 situation which I would rather do than if the Governor
16 wouldn't appoint anybody, there would still be an election.

17 THE CHAIRMAN: Dr. Bard? Just a second, you
18 want to comment on the suggestion of Dr. Burdette?

19 DR. BARD: I think he really commented. His
20 language as stated wasn't very much of an improvement
21 over what we have.

1 THE CHAIRMAN: I don't think he was trying to
2 do that. He was suggesting an addition as you have drafted
3 the Section, you do not permit one to one forelection
4 without appointment by the Governor. He is suggesting a
5 positive provision that one can run for election if the
6 Governor does not make the appointment.

7 DR. BURDETTE: I was trying language that did
8 both.

9 THE CHAIRMAN: Did you want to comment on the
10 principle?

11 DR. BARD: The principle is important, I think,
12 yes. If we could work it in, I think we can, it is good.

13 THE CHAIRMAN: Judge Adkins?

14 JUDGE ADKINS: I suggest we clarify the point
15 that Dr. Jenkins raised by using the language that is
16 used in connection with the city judge principle and add
17 here, shall serve only until the next biennial general
18 election occurring more than 90 days after the vacancy
19 occurs, if 90 days is adequate; I am not sure it is.
20 Then if you had the situation which Dr. Jenkins suggested
21 occurring, a man could be appointed to serve until the

1 next, the second successive biennial election.

2 THE CHAIRMAN: Dr. Bard or Dr. Michener,
3 would you comment on that?

4 DR. BARD: It is certainly worth considering.

5 THE CHAIRMAN: That still doesn't reach
6 Dr. Burdette's point, and I am not clear, you say it is
7 an important question, but what would be the recommenda-
8 tion of the Committee?

9 Mr. Della?

10 MR. DELLA: Dr. Burdette's point was the person
11 would be appointed by the Governor, would be on the
12 ballot approved by the people. He would not have any
13 candidates running against him.

14 MR. CASE: What is his point? Will somebody
15 state it?

16 THE CHAIRMAN: His point is, if the Governor
17 makes no appointment, that there is nothing in the
18 Section which gives anybody the right to be nominated and
19 stand for election. Suppose there is a vacancy six months
20 before an election. This Section talks only about the
21 vacancy being filled by appointment. It doesn't say

1 anything about the vacancy being filled by election,
2 either at the expiration or anything else. Is that your
3 point, Dr. Burdette?

4 DR. BURDETTE: Yes.

5 DR. MICHENER: What we are trying to put here was
6 the basic mechanism with the idea that much we have to do
7 has been to supplement by legislation. We assumed this
8 provided for an election, and would be provided by statute.

9 THE CHAIRMAN: That is not Dr. Burdette's point.
10 All he is saying is that you provide here a means of fill-
11 ing a vacancy for a part of an unexpired term by appoint-
12 ment. You do not provide that the vacancy after the
13 next general election shall be filled by election. The
14 implication is, it is. His point is, you don't specifical-
15 ly state that the vacancy existing after the next general
16 election shall be filled by election.

17 DR. BURDETTE: My suggestion came from the
18 Chairman's comment which seemed very clear that if a per-
19 son, for example, should resign from the Legislature in
20 April of an election year, that the Governor would simply
21 wait until after it were too late to get on the ballot,

1 and then of course, the Governor would make the appoint-
2 ment for the entire remaining two years, but in order
3 to avoid that quite real possibility that you brought up,
4 Mr. Chairman, we should simply provide for an election for
5 the remainder of the term.

6 DR. WINSLOW: Why does not the last phrase in
7 the Section take care of that, at which time, that the
8 next biennial general election, any remaining portion of
9 the term shall be filled by election. It doesn't matter
10 whether the Governor has appointed or not.

11 MR. CASE: That would be my interpretation.

12 DR. WINSLOW: I think that Judge Adkins'
13 time schedule may be a desirable thing to put in, in order
14 to make sure that there is time for candidates to get
15 in. I had assumed that in speaking of the next biennial
16 general election, it would be an interpretation of a court
17 at least, the time would have to be allowed to get a
18 man's name on the ballot.

19 THE CHAIRMAN: That is a different question from
20 Dr. Burdette. Dr. Burdette, are you satisfied with the
21 explanation concerning the last phrase, the last two lines?

1 DR. BURDETTE: Let me say since I am not a
2 lawyer, you have brought up a perfectly valid type of
3 maneuver.

4 THE CHAIRMAN: I think I was in error.

5 DR. BURDETTE: All right, I am satisfied.

6 THE CHAIRMAN: Any further comment?

7 MR. CASE: Mr. Chairman, I have one question
8 and one comment.

9 The question is, does this Section, Dr. Bard,
10 or any of your work product take care of the case
11 where a man has been elected, that is the election has
12 been held, he's got the votes, so he's elected; but before
13 the General Assembly is formed, he dies. In other words,
14 he has been chosen for the General Assembly and dies
15 before the General Assembly.

16 DR. BURDETTE: I think it does take care of it.
17 It is a vacancy. They can tend to the vacancy.

18 JUDGE ADKINS: He presents himself to be sworn
19 in?

20 DR. BARD: I would think it would.

21 MR. CASE: That was my question. I wasn't sure.

1 The next thing is, under the present Constitu-
2 tion, of course, which you are seeking to carry forward
3 in this as a matter of theory, the Governor is required
4 to appoint from the list submitted by the State Central
5 Committee. What are the arguments for or against not
6 making a similar provision here?

7 DR. BARD: There are a number of arguments
8 that came up before our Committee, and I might add that
9 this was settled at another time, one, the fact that, I
10 don't know why I should bring bad news into this particular
11 commentary, but it is our feeling that the State Central
12 Committee ought not to be involved in this factor. They
13 often do not represent the best segment of the political
14 party and most often would not be prepared really to neces-
15 sarily give the Governor the best advice.

16 You will remember -- at least, I remember --
17 in the City of Baltimore very recently where the Governor
18 just didn't make an appointment because he felt that the
19 State Central Committee was going to advise him along
20 other lines and he didn't make it.

21 MR. CASE: I must confess to you that I think you

1 are taking a view of maybe as a practical thing, which
2 doesn't square with the theory of it because, take this
3 example, suppose you have a Democratic Governor but the
4 vacancy is caused by the death of a Republican Member.
5 I am using this as an example. Now, isn't it better
6 to insure at least that the Republican party has somebody
7 that people who work in the party, somebody that they
8 want rather than to pick a Democratic type representative,
9 which is what would happen if this is true.

10 I just think that where you have got that
11 situation where the Governor is in one party and the
12 deceased Member is in another party, there ought to be
13 some way to insure that the party's man goes in and not
14 the Governor's man.

15 THE CHAIRMAN: Wait just a second. We are
16 discussing now a question we discussed before. The
17 action of the Committee here was the action they were
18 directed to take by the Commission previously. Do you
19 want to reconsider the action?

20 MR. CASE: I guess I wasn't here or had for-
21 gotten it.

1 THE CHAIRMAN: It was discussed, I think, at
2 two meetings. You had to leave on the second day, but
3 there was a full discussion, and the vote was that the
4 Committee redraft the Section in the form of what is
5 stated here.

6 MR. CASE: Well, I don't want to keep pro-
7 longing it, but I sincerely feel this is a bad thing.

8 THE CHAIRMAN: Mr. Sayre?

9 MR. SAYRE: Mr. Chairman, Mr. Case brought up
10 one point, and the quickest way to state it is, I inter-
11 pret this Section to mean, number one, the Governor
12 may appoint as provided by law with number two, the res-
13 triction that it be a member of the party, and I interpret
14 that to mean Republican, Democratic, vegetarian, social
15 labor, if it is a party, and that if it is an Independent,
16 he may choose an Independent or a party man, but he has
17 complete discretion there which is point 3. Do I inter-
18 pret that correctly?

19 THE CHAIRMAN: Except the phrase, as provided
20 by law, which the Committee directed be deleted and is
21 not in this Section.

1 MR. SAYRE: Except we don't prevent it being
2 provided by law, as to whether it is from the Central
3 Committee's list or not.

4 THE CHAIRMAN: The Constitution under this
5 Section as drafted is in accord with the action of the
6 Commission which is that the Governor has the power so
7 the Legislature could not change it then. That was the
8 action of the Commission.

9 MR. SAYRE: Do I interpret the other part cor-
10 rectly?

11 THE CHAIRMAN: I would think so.

12 MR. CASE: Mr. Chairman, if this matter did
13 come up on the second day of the last meeting, I believe
14 perhaps there were less than a majority here.

15 THE CHAIRMAN: No.

16 MR. CASE: I don't think there were more than
17 12, if the newspapers are correct. I would, therefore,
18 because we have a more representative group here tonight,
19 I will ask that this matter be reopened.

20 THE CHAIRMAN: There is a motion to reconsider.
21 Is there a second?

1 MR. HOFF: I will second.

2 THE CHAIRMAN: There is no debate on this
3 under our rule. All those in favor of reconsidering,
4 signify by a show of hands. Contrary? The motion is
5 lost, 6 to 9.

6 DR. BARD: I have one point. I believe Judge
7 Adkins had a good suggestion there. Am I assuming we
8 have the authority to incorporate the suggestion? You
9 remember it now reads, and provided, this is Section 10,
10 persons so appointed shall serve only until the next
11 biennial general election occurring more than 90 days
12 after the vacancy occurs. In other words, you set forth
13 that 90 days.

14 THE CHAIRMAN: Is there any objection to making
15 that change?

16 DR. BURDETTE: I wonder if it may not be a
17 little too long, the 90 days. I presume Judge Adkins,
18 well, Judge Adkins couldn't be hoping there would be a
19 primary, but that is, of course, there would be a primary
20 in the event the vacancy had been filled a whole year
21 before. But I would like to get enough days so that the

1 State Central Committee of the party could put a name on
2 the ballot as it could on any other vacancy in the case
3 of a vacancy of a primary. It doesn't seem to me neces-
4 sary to wait 90 days. Am I wrong about this?

5 JUDGE ADKINS: Well, I have no difficulty.
6 in the term 90 days. It seems to me 90 days is sufficiently
7 short time to get action.

8 THE CHAIRMAN: It couldn't be much less than
9 90 days, could it?

10 DR. BURDETTE: You don't think it could be 60
11 and get on the ballot?

12 THE CHAIRMAN: Any objection then to the
13 change that Dr. Bard gave in Section 10? Want to give
14 us that language again, Dr. Bard?

15 DR. BARD: Serve only until the next biennial
16 general election, and this is added, occurring more than
17 90 days after the vacancy occurs.

18 MR. HOFF: A query. How many people can run
19 for the office?

20 THE CHAIRMAN: Dr. Bard?

21 DR. BARD: I would think this would hold true,

1 anybody else who wants. It would be by statute, wouldn't
2 it? That is our feeling.

3 MR. DELLA: There would be a open election for
4 that particular seat.

5 MR. HOFF: Is the person selected by his party
6 to run for that seat?

7 THE CHAIRMAN: Apparently under the same
8 machinery as any other election.

9 Mr. Mindel?

10 MR. MINDEL: I understand the primary occurs
11 before the general, anybody could file and run against
12 this candidate appointed by the Governor. Maybe this man
13 might not want to run himself. The judges now can file
14 in the primary elections, can file on both tickets, but
15 it seems to me this would be a wide open election pre-
16 ceding the general. That is my understanding.

17 THE CHAIRMAN: Does that answer your question,
18 Mr. Hoff?

19 MR. HOFF: It answers my question if the vacan-
20 cy occurs before a primary, but if it occurs after a
21 primary?

1 THE CHAIRMAN: That is the provision for the
2 amendment, occurring more than 90 days -- what was your
3 language?

4 DR. BARD: Ninety days after the vacancy
5 occurs.

6 JUDGE ADKINS: May I make a comment? It seems
7 to me, Mr. Hoff's question is answered by this concept,
8 that if the primary has already occurred, then the vacancy
9 on the ballot would be filled in the normal way in which
10 vacancies are filled on the ballot, to wit, by appoint-
11 ment of the governing body of the party which under the
12 Maryland laws are the State Central Commission or by
13 petition as the case may be. If the primary has not
14 occurred, the primary would be the effective vehicle
15 for getting the man on the ballot.

16 MR. SYKES: The question that makes me wonder
17 is what happens if there is a filing by several other
18 candidates against this candidate whose term expires and
19 then he dies and --

20 THE CHAIRMAN: Who is the "he"?

21 MR. SYKES: The incumbent dies before his term

1 expires, and 89 days from the biennial general election,
2 the Governor appoints a substitute. Now, does that
3 substitute have a clear field and have the right to dis-
4 franchise the voters from voting for the others who have
5 filed in the normal course? It would under this language,
6 wouldn't it?

7 JUDGE ADKINS: The appointee in no event could
8 serve beyond the unexpired term of the man whom he was
9 replacing, and if his term expired, if you are envision-
10 ing a situation where people are filing for the new term,
11 then the problem wouldn't arise.

12 MR. SYKES: I suggest the language doesn't
13 say he can serve only the unexpired term in any event.

14 THE CHAIRMAN: Well, might we cover that by ask-
15 ing the Committee to take that suggestion into considera-
16 tion?

17 DR. BARD: Certainly.

18 THE CHAIRMAN: Any further question on this
19 Section? I suggest to you a possible hiatus that you
20 might have an appointment. Two years before the end of
21 the term, and the person who was appointed would have his

1 term expire at the general election, and you would then
2 have no person occupying that position from the time of
3 the general election until the next session of the Legis-
4 lature.

5 In other words, from November 7 until the
6 third Monday of the next January, so perhaps this ought
7 to say that the person so appointed shall serve until
8 the next session of the Legislature immediately following
9 the next biennial general election or some such language.

10 DR. JENKINS: Mr. Chairman, may I suggest if
11 this gets too complicated, we may want to go back to,
12 as provided by law. I suggest that to the Committee.

13 THE CHAIRMAN: Any further comment as to Sec-
14 tion 10? If not, we will move on, and go back to the
15 body of your Report.

16 DR. BARD: Section 11, Page 4, you remember
17 you had asked us to revise this in order to take care of
18 certain situations where a person might have an oppor-
19 tunity to run for newly created positions or where a
20 person might take over a position where the salaries
21 had been increased but not increased by the General Assembly.

1 I think Dr. Jenkins raised this question at the last
2 general meeting here, and so we have revised it, we think,
3 and that takes care of the situation. It reads, No
4 member of the General Assembly shall, during the term of
5 office for which he was selected, be appointed to any
6 office which shall have been created, or the salary or
7 profits of which shall have been increased, by the
8 General Assembly during such term.

9 He could assume an office where the profits or
10 salary had been increased but not as an action by the
11 General Assembly.

12 MR. GENTRY: The words, or profits, what do
13 they add to?

14 DR. BARD: They may be peripheral advantages,
15 emoluments, they could be expenses, et cetera.

16 MR. SAYRE: Commissions, fees. Wouldn't it
17 be better to just --

18 THE CHAIRMAN: Any further comment or suggestion
19 as to Section 11? If not, move to Section 12 on Page 6.

20 DR. BARD: Section 12. Members of the General
21 Assembly shall not be liable in any civil action or criminal

1 prosecution for any words used in any proceedings of the
2 General Assembly.

3 What we want to get over here was that they
4 were words whether they be spoken or written, whether
5 they be in debate in the House or Senate or in Committee,
6 so we thought we would just use the term, words, for any
7 words to take care of written or spoken and in any pro-
8 ceedings to take care of any of the peripheral assign-
9 ments tied in with his responsibilities as a Member of
10 the General Assembly.

11 THE CHAIRMAN: Any question, any comment? If
12 not, move to Section 13, Page 6.

13 DR. BARD: Section 13. Each House shall be the
14 final judge of the qualifications and election of its
15 Members, as prescribed by the Constitution and laws of
16 the State. Each House shall appoint its own officers and
17 determine its rules of procedure, and shall have power
18 to compel the attendance and testimony of witnesses and
19 the production of records and papers either before such
20 House as a whole or before any Committee thereof; provid-
21 ing that the General Assembly shall by law protect

1 requested records and papers and the rights of witnesses.
2 Each House may punish a Member for disorderly or disres-
3 pectful behavior and with the consent of two-thirds of all
4 its Members expel a Member.

5 We have our two-thirds in there again. There
6 are two or three different two-thirds here, Mr. Chairman.

7 THE CHAIRMAN: Any question as to the Section?

8 MR. BOND: I question the language, the General
9 Assembly shall by law protect the rights of witnesses.
10 I am not enthusiastic about that.

11 THE CHAIRMAN: I am sorry I didn't hear you.

12 MR. BOND: I am not enthusiastic about that
13 language going into the Constitution.

14 DR. BARD: We put this in almost by assignment.
15 You will remember that there was a good deal of feeling
16 that if we were going to compel the attendance and testi-
17 mony of witnesses and production of records and papers,
18 that it was felt that the House, that the General Assem-
19 bly would have to do this at different occasions, then
20 there ought to be the protective element in regard to
21 this not getting to be sort of --

1 THE CHAIRMAN: I am not sure your statement,
2 you are not happy with it, is it the principle or the
3 language used?

4 MR. BOND: I think it goes to both, sir. I
5 was present at that discussion on this Section, sir. I
6 have no such recollection that the Committee was given
7 the charge that the General Assembly shall by law protect
8 the rights of witnesses.

9 THE CHAIRMAN: Let me state my recollections,
10 that the Commission decided that there should be provision
11 for the protection of records, papers, and rights of
12 witnesses. I do not think the Commission decided that
13 this should be by law passed by the General Assembly
14 necessarily.

15 JUDGE ADKINS: Was there a clear decision that
16 the power, that the power of subpoena would be included
17 in this. I remember there was discussion. But was there
18 a clear voted decision on that question, or is that still
19 open for debate?

20 THE CHAIRMAN: I think it is necessarily open
21 for debate with this thought, that the statement of the

1 Commission, as I understood it, was that this Section
2 should be so drafted as to protect witnesses and papers
3 and documents from unreasonable requests for production
4 and so forth. I do not think it was any discussion as to
5 how that should be accomplished, whether it should be
6 by limitation on the exercise of the power of subpoena
7 or by law or what. So I think the whole subject is open
8 for discussion.

9 JUDGE ADKINS: I should like to suggest that
10 the power of compelling testimony of witnesses should be
11 only as the result of some extraordinary vote of one or
12 both sections of the House. I think this is a very
13 dangerous and treacherous clause. I think the power of
14 Legislature investigation has been subject to great
15 abuse at the Federal level in recent years, and I see no
16 reason for it to be extended to the State level. I sug-
17 gest it be eliminated in its entirety or at least be
18 limited to being exercised only as a result of the two-
19 thirds vote of the Legislature.

20 DR. BARD: I have one general statement to
21 make, and that is, that Judge Adkins has set forth, I think,

1 splendidly the dilemma we faced in the subcommittee. We
2 recognized there would be occasions when it would be
3 necessary to call for the testimony of witnesses and for
4 the production of records. We also recognized that there
5 was the danger that such power could be abused. In deal-
6 ing with these ambivalent concepts, we attempted to kind
7 of balance the scale justly on both sides, and this is
8 why we said, providing that the General Assembly shall by
9 law protect.

10 Now, if you can improve the wording here, well
11 and good. This was a very sensitive situation we had
12 to deal with, and I would like Dr. Michener to comment on
13 this whole question because at our Committee meeting,
14 we talked at length in regard to the importance of this
15 power and also the importance of safeguarding it.

16 DR. MICHENER: I don't want to say much. As
17 I recall from looking through the transcripts, this had
18 been discussed at some length before and the arguments
19 brought up for and against. The Legislature has to have
20 facts in order to draft and form meaningful legislation.

21 The Legislature does and can give power to

1 subpoena records from the Executive Department, where
2 you are dealing in economic affairs, and you have the
3 subpoena power there. It seems rather strange for the
4 Legislature to give subpoena power to its agencies and
5 not have it itself.

6 THE CHAIRMAN: Mr. Clagett?

7 MR. CLAGETT: I agree with Judge Adkins that
8 this is a rather dangerous clause because it gives a
9 certain amount of mandate here that the General Assembly
10 shall by law protect, requested recorded and papers and
11 the rights of witnesses, and what we are really driving
12 at here is not to protect them from any and all demands
13 or summonses but only from those which are unreasonable
14 abuse; and maybe we can narrow this thing and do what
15 we are trying to do here by adding the words, rights of
16 witnesses, and after those words, from unreasonable
17 abuse.

18 THE CHAIRMAN: Any further comment, discussion?
19 Dr. Michener?

20 DR. MICHENER: I would like to make this one
21 comment; many of us are distressed by the growth of the

1 powers of the Federal Government, but oftentimes, this
2 is occasioned by the failure of the States to take effective
3 action, and anything we do that helps build up the
4 powers of the State Legislatures to take effective action
5 at the State level is one means to prevent further increases
6 in Federal power, and here this has a double edged effect.
7 If you restrict the State Legislature, you may keep down
8 abuses of their power if this creeps in, but you may be
9 encouraging abuses of a similar power at the Federal
10 level.

11 JUDGE ADKINS: I think the treachery in this
12 Section can quite well be envisioned if you can imagine
13 the power of subpoena of books and records and personnel
14 attendance being granted to each Chairman of each Committee
15 of both Houses of the Legislature.

16 Now, this can become a very dangerous situation
17 unless there is some restraint, and there is none here,
18 this provision for protection really means nothing,
19 because the protection that a man would need in producing
20 records would be the protection of secrecy. You
21 obviously can't produce secrecy in the halls of Annapolis.

1 If you can, you are doing something I can't do. It is a
2 dangerous power and should be exercised with great res-
3 traint, such as requiring two-thirds vote of either
4 House or both Houses.

5 THE CHAIRMAN: Mr. Bond?

6 MR. BOND: I would like to ask Judge Adkins
7 why he would allocate the word, treachery, to elected
8 State officials and not to elected Federal officials. I
9 think in order to properly legislate and ascertain infor-
10 mation that we should strengthen the Committees of the
11 Legislature, and I think you have the right of subpoena.

12 JUDGE ADKINS: I can't deal with the Federal
13 Constitution. That is not before us.

14 MR. MINDEL: According to my notes, the last
15 meeting, I used the language like the matter should be
16 germane to something before the Legislature. I was not
17 present at the Committee meeting, but my recollection is
18 that we wanted to give the Legislature that power provided
19 it had some matters before it, and if this investigation
20 or the books and records were necessary to determine this
21 matter, then we wanted to give them that power. We were

1 going to restrict it that way, but I don't think this
2 quite accomplishes that.

3 THE CHAIRMAN: Dr. Michener?

4 DR. MICHENER: I had this in mind, and this is,
5 of course, true in the Federal System where the request
6 for documents has to be pertinent in some matter where
7 Congress can legislate. But the State can legislate in
8 any area, and my feeling was this restriction would not
9 have meaning.

10 THE CHAIRMAN: Mrs. Bothe?

11 MRS. BOTHE: Has there been any evidence that
12 without the power, and I understand the General Assembly
13 except by grand inquest has not had the power in all
14 these years, it has been laboring under such a disability
15 that they ought to be granted it with all the treachery
16 and all the dangers inherent in it.

17 MR. BOND: May I comment?

18 THE CHAIRMAN: Any comment, Dr. Bard, or
19 Dr. Michener?

20 DR. BARD: When Congressman Miller returns,
21 we would like to have him comment.

1 MR. BOND: I can give one specific example,
2 Mrs. Bothe, and that is on the revolving credit bill.
3 The revolving credit bill, I am told by people on the
4 Legislative Committee and also by Attorney Hoff, repre-
5 sented certain clients, if the facts had been presented that
6 the Legislative Committee wanted, perhaps a proper credit
7 bill could have come forth. There are two terms where
8 the Legislature has not been able to ascertain the
9 facts involving credit, mercantile credit. That is a
10 specific example.

11 DR. BARD: Mr. Chairman, I just make one com-
12 ment. What happened last time and the discussion that
13 is taking place here again makes me feel that we really
14 are as of one. We want this power limited. Everyone
15 on the Committee felt very strongly in this respect.
16 We feel that it ought to be germane. We think it ought
17 to be used only when it is important. Furthermore, we
18 want to find some way to protect the power. I don't
19 think the debate is in philosophical belief here. The
20 debate is rather in the wording, and I suspect that we
21 have not worded/in its best form.

1 THE CHAIRMAN: Well, are you suggesting that
2 the Committee consider this Section as referred back to
3 it for further wording?

4 DR. BARD: For rewording. We tried very hard
5 to come to grips with how could we give them this power,
6 but limit it so it would be germane, so it would be
7 necessary and at the same time safeguard it. This we
8 are seeking to do. Now, if we reword it, I would be
9 certainly grateful to anyone on the Commission if they
10 could come up with some wording perhaps during the three
11 days we are here.

12 THE CHAIRMAN: Any objection to that procedure?

13 JUDGE ADKINS: Does that carry with it a tacit
14 acceptance of the power to compel, the subpoena power?
15 In other words, is that question being foreclosed by this
16 reference back; if so, I would like to have a vote on
17 that.

18 THE CHAIRMAN: I don't think it is foreclosed.

19 DR. BARD: No, let me say again, Judge Adkins,
20 a while ago you said you felt that it ought to be there
21 if two-thirds of the State Legislature would grant it.

1 This is yet another indication that there is a necessity
2 for it, but it is one that should be used most carefully.
3 This is the feeling of our Committee. If the two-thirds
4 wording would take care of this concern that we have,
5 certainly our Committee would go along with it. We would
6 want to do anything to safeguard the power. On the other
7 hand, we do feel there are some occasions, and we also
8 believe it ought not to be a broad power. Does that answer
9 your question?

10 JUDGE ADKINS: Well, I don't want this to
11 become a personal thing, my own preference would be it
12 not be included.

13 THE CHAIRMAN: I would not take it that the
14 reference back to the Committee would, if the Committee
15 comes up with a recommendation that there be the subpoena
16 power subject to some limitation, you would not be pre-
17 cluded from raising the question that it ought not to have
18 the power at all.

19 JUDGE ADKINS: That is all I need.

20 THE CHAIRMAN: Any further discussion?

21 MR. CASE: What is the resolution at this point?

THE CHAIRMAN: As to this question dealing with

1 the middle part of the Section, it is referred back to
2 the Committee to consider again and make further report
3 to the Commission.

4 MRS. BOTHE: Mr. Chairman, getting back to
5 this subject, if I may for a moment, could we possibly
6 take the sense of the Commission on the question of
7 whether the power should be granted below the level of the
8 General Assembly or one of its Houses as a whole?

9 I think the point that Judge Adkins is making,
10 and I concur with him, is that it should not be granted
11 to anything less, by grant of anything less than the
12 entire House with an extraordinary vote, that a Committee
13 Chairman shouldn't have it.

14 THE CHAIRMAN: Well, I take it that this is
15 one of the things the Committee would be considering,
16 so that if we were going to take the sense of the Commis-
17 sion on it, I think it ought to be merely in broadest
18 terms without precluding the possible alternatives that
19 the Committee might consider. If you want to submit
20 that --

21 MRS. BOTHE: Then I think it might simplify

1 the Committee's task.

2 THE CHAIRMAN: Dr. Bard, do you understand
3 what is suggested?

4 DR. BARD: Yes, I do, very much so. This is
5 a very complex question. Let me ask Mrs. Bothe,
6 suppose the two Houses were to set up a committee
7 embracing both Houses. Would that committee have that
8 power, for example?

9 MRS. BOTHE: No, unless in a particular in-
10 stance they wanted to subpoena a Mister X with particular
11 records, and he wouldn't come. They would have to get
12 under my proposal a two-thirds vote of that House in
13 order to compel Mister X and his records to appear.

14 DR. BARD: I tend to agree with you. I don't
15 know whether the rest of the Committee do or not.

16 MRS. BOTHE: On the revolving credit example,
17 if it is a serious enough question as it appears to be,
18 that such action could be taken and the Legislature then
19 could obtain the information it needs to formulate a
20 revolving credit bill.

21 THE CHAIRMAN: Mr. Case?

1 MR. CASE: Mr. Chairman, I would like to re-
2 orient my thinking at least on this subject because it
3 seems to me that it is being approached theoretically
4 at least from the wrong direction. The power of the
5 subpoena is, I believe, one of the so-called inherent
6 powers of sovereignty, and we don't take about the State
7 Constitution granting that power. Really what we talk
8 about is the State Constitution restricting that power,
9 and by that I mean this: The General Assembly has on
10 many occasions granted to boards and agencies in the
11 State the subpoena power. I have personally drawn a
12 number of statutes which have been passed which say
13 exactly this, and I have no doubt that if it wanted to do it,
14 the General Assembly could pass an act reorganizing it-
15 self and granting to its committees right today, the
16 general subpoena power; so what my friend, Dale Adkins
17 is so worried about is today completely possible under
18 the present, under our present situation.

19 Therefore, it seems to me that the question
20 is not whether we want to grant the right of subpoena,
21 but just how far we want to restrict it, and that it

1 seems to me has not been quite met by the debate here
2 today.

3 THE CHAIRMAN: Mr. Clagett?

4 MR. CLAGETT: Mr. Chairman, picking up right
5 there, I want to clarify the remarks that I made earlier
6 because I thought when I was agreeing with Judge Adkins
7 that I was agreeing that the General Assembly should have
8 the power to compel the attendance of witnesses and the
9 production of records, but I was trying to prevent the
10 exercise and use of that power from an abuse.

11 I did not mean that it should be unduly re-
12 stricted as it is now, eliminated, and I agree that I
13 think we are approaching it from the wrong point of view.
14 I am now satisfied in reading the language that the
15 Committee has come up with here, that what we are doing
16 is really doing the job that the General Assembly will
17 have to wrestle with through an appropriate committee which
18 can study the background and the deeds and necessities
19 and do by law what we are attempting to do, by a search
20 for words or phrases, either by restriction or by elimina-
21 tion.

1 THE CHAIRMAN: Any further comment? Any further
2 discussion?

3 MR. SAYRE: On that point, you mean?

4 THE CHAIRMAN: Yes. Mr. Case, in order to put
5 the question before the group, would you want to move
6 that the language, shall have power to compel the attendance
7 of witnesses and the production of records and papers
8 either before such House as a whole or before any Com-
9 mittees thereof, providing that the General Assembly
10 shall by law protect requested records and papers and the
11 rights of witnesses, be deleted? I take it that without
12 such a provision, the Legislature can provide for this.

13 MR. CASE: That is undoubtedly the case.

14 THE CHAIRMAN: And if this was deleted, there
15 would be unlimited power in the Legislature to compel
16 the production of records.

17 MR. CASE: I hasten to add I am not for this,
18 but I want to make abundantly clear what Dale Adkins was
19 saying, his approach to me to be in the inverse order of
20 things, what we ought to talk about is restricting the
21 power and how far we want to restrict it because it is

1 there now.

2 THE CHAIRMAN: It seems to me Mr. Case's
3 point is well taken. If the Committee is to have any
4 guidance, perhaps we ought to take a few votes on general
5 principles as to what, if any, limitations there ought
6 to be.

7 MRS. BOTHE: Mr. Chairman, I would not accept
8 Mr. Case's statement. I am in no position to debate it,
9 but I think the Committee should advise the Commission
10 as to what the powers of the General Assembly are.

11 Now, Article III, Section 24, which is the one
12 pertaining to the grand inquest does give the General
13 Assembly the power, the House of Delegates the power to
14 subpoena, et cetera. Nowhere else in the existing
15 Constitution is the power referred to, and I think we
16 have all proceeded on the assumption that without a con-
17 stitutional grant, there is at least a doubt that a
18 committee of the General Assembly could issue a valid sub-
19 poena.

20 MR. CASE: I can tell you right now that the
21 Legislative Council has been doing it for a long time.

1 THE CHAIRMAN: Without getting into a debate
2 of the question, I think the Committee could, if for no
3 other reason than to document our Report, make a definitive
4 statement on this point, but we could still take the
5 sense of the Commission on what, if any, restrictions
6 there should be on the power.

7 Now, you want to put up the first restriction
8 that you suggested a few moments ago?

9 MRS. BOTHE: That is only by action of a House,
10 I would say, of the General Assembly acting as a whole
11 and on a two-thirds vote could the subpoena powers be
12 acted on. Of course, my motion, perhaps, would be in-
13 appropriate if we are wrong about the inherent powers of
14 the Legislature. It might belong in the Declaration of
15 Rights.

16 THE CHAIRMAN: I think that we will have to
17 assume at the moment that either the Legislature has or
18 doesn't have the power. the Committee wants to know whether
19 there are some limitations which the Commission wants to
20 put on that power. Now, do you want to propose such a
21 limitation?

1 MRS. BOTHE: I would propose that a limitation
2 be that the power can only be exercised by action of
3 either House as a whole on a two-thirds vote.

4 JUDGE ADKINS: I will second that.

5 THE CHAIRMAN: Are you talking about the
6 initial power to compel the attendance?

7 MRS. BOTHE: To compel the attendance of wit-
8 nesses or subpoena information.

9 THE CHAIRMAN: Is there any further discussion
10 of that particular question at this time?

11 Mrs. Bothe's suggestion is that the power of
12 the Legislature or of any committee of the Legislature to
13 compel the attendance of any witness or books or papers
14 should be limited by the requirement that it be exercised
15 only on a two-thirds vote of the appropriate House.

16 MR. SAYRE: Of the appropriate House, okay.

17 MR. MARTINEAU: Shouldn't we first vote on
18 Judge Adkins' point? It seems to me we should first
19 decide whether we want the Legislature to have the power
20 at all.

21 THE CHAIRMAN: If we debate procedure, we will

1 waste the afternoon. Let's get the sense of the Commis-
2 sion on various questions. You can put up anything you
3 want. Any discussion of this particular question?

4 MR. BOND: I would say I am kind of amazed
5 because we are trying to build up the State, sustain the
6 State and yet not willing to give the arm of the Legis-
7 lature that which the government has. Everything/^{is}subject
8 to abuse as long as there are humans in the world, but
9 I certainly feel that the Members of the Congress have
10 this power, and most of them do not abuse it, and I would
11 hope our elected representatives would go along and
12 not abuse it either.

13 THE CHAIRMAN: Dr. Michener?

14 DR. MICHENER: I wonder if the amendment will
15 have the aim it is intended to have. As I understand it,
16 there will be nothing to prevent the Houses from the
17 start of the session by whatever vote is required to
18 authorize the Committees to have subpoena power for that
19 session. They could enumerate all the Committees and make
20 all these particular instances.

21 JUDGE ADKINS: Amend your motion.

1 MRS. BOTHE: I amend the motion. The motion
2 was one of sense rather than language, but the intention
3 was that this apply to each particular instance where
4 the power is sought to be exercised.

5 THE CHAIRMAN: In other words, the suggestion
6 is that each request of the Committee to require attendance
7 of a witness or production of a document or a book or
8 record require a vote of two-thirds of the appropriate
9 House.

10 Any further discussion?

11 MR. CASE: May I ask a question? Does this
12 mean that in general legislation where, for example,
13 the State is establishing a board or agency and feels
14 necessary to grant that board or agency subpoena powers,
15 that that bill implementing this situation would require
16 two-thirds vote.

17 MRS. BOTHE: I am speaking of procedures in
18 the Legislature.

19 MR. CASE: So the result of what you are saying
20 is that the Legislature has to get two-thirds of its
21 Members to vote for it, but it can grant it to any

1 administrative agency by a simple majority.

2 MRS. BOTHE: Yes.

3 THE CHAIRMAN: Any further discussion?

4 Mr. Sykes?

5 MR. SYKES: I think Mrs. Bothe's suggestion
6 applies the sanctions at the wrong point. If you are
7 going to have to go through the machinery of getting
8 two-thirds of the House to authorize the issuance of
9 a subpoena, you are going to be clogging up the legis-
10 lative calendar on matters that may not even be contested,
11 and the time for the application of sanctions is when
12 a bona fide dispute arises and so challenge is made to
13 the appropriateness of the subpoena in the particular
14 instance.

15 Most of the subpoenas will be honored as a
16 matter of course, and all you/ are doing is multiplying work,
17 and I am against the proposal on that ground although I
18 feel there should be safeguards before a subpoena can
19 be enforced.

20 THE CHAIRMAN: I think Mrs. Bothe would probably
21 consent to say her motion would mean that a witness could

1 be compelled against his consent to appear or produce
2 a document only by the two-thirds vote.

3 MRS. BOTHE: That is right. I wouldn't con-
4 template every time a witness is requested, he would have
5 to be approved by the two-thirds majority.

6 THE CHAIRMAN: Any discussion?

7 DR. BARD: We are hopeful Congressman Miller
8 will speak on some of the issues that arose in connection
9 with the subpoena power and the necessity for it.

10 MR. MILLER: I was called away for a short
11 time. I don't know where we have gotten.

12 THE CHAIRMAN: Let me state very briefly,
13 Mr. Miller. The statement has been made in the absence
14 of some provision in the Constitution, the Legislature
15 as a part of the exercise of the power of sovereignty
16 has the power to compel attendance of witnesses and books
17 and papers. Not all Members of the Commission are ready
18 to accept that at the moment, and the Committee is to
19 document it one way or the other.

20 What we are doing is taking a series of votes
21 to take the sense of the Commission as to whether there

1 should be any limitations on the power to compel atten-
2 dance of witnesses or production of papers, and if so,
3 what limitations. The present suggestion is that a wit-
4 ness can be compelled against his consent to appear
5 before the Legislative Committee or the Legislature or to
6 produce books or records or a Committee of the Legislature
7 or the Legislature only by a two-thirds vote of the
8 appropriate House.

9 MR. MILLER: That would be without giving the
10 Committee, in other words, to get an individual witness,
11 a Committee would have to get the vote of the whole House.

12 THE CHAIRMAN: If the Committee, if the witness
13 objected to appearing in response to the subpoena of the
14 Committee, then they would have to get two-thirds vote
15 of the House in order to compel his attendance.

16 MR. MILLER: Frankly, Mr. Chairman, I think
17 that would be tremendously clumsy. I don't see really
18 any serious objection to making the legislative body
19 when it is acting within its scope of its authority have
20 him get a witness as easy as a court can get them. The
21 witness is still protected by the Constitution, can take
the Fifth Amendment or anything else. I see no reason

1 why he shouldn't be handled in the ordinary routine of
2 business, not make a special resolution for each indivi-
3 dual witness.

4 THE CHAIRMAN: Any further discussion?

5 Mr. Sayre?

6 MR. SAYRE: Mr. Chairman, I would maybe like
7 to hear an elaboration as to the rationale here. I can
8 think of one in another State Legislature. Could you
9 elaborate on this?

10 MRS. BOTHE: I don't feel the Legislatures are
11 analogous to courts or to administrative bodies. They
12 are not primarily fact finding organizations. They are
13 political organizations designed to pass laws, and be-
14 cause of that, the abuses potentially inherent in a Legis-
15 lature especially one that is not in continuous session
16 that holds a short meeting once a year being able to have
17 an investigative free for all which has never happened
18 in Maryland because regardless of what the actual state-
19 ment of affairs may be, the Committees are apparently
20 under the impression that they cannot compel the attendance
21 of witnesses and have never tried it. This provision,

1 a specific authorization in the Constitution would cer-
2 tainly be an invitation for them to do so, and I feel
3 that if there is going to be any question of committees
4 exercising the authority which they may or may not have,
5 but they have exercised in the past, that the Constitu-
6 tion ought to put as strong a restriction on them because
7 history has demonstrated that the nature of their busi-
8 ness is such that the allowance of unlimited power to
9 compel books and records and witnesses is bound to lead
10 to unconstitutional, by Federal and State standards as
11 well, chaos. I don't want to see it happen.

12 THE CHAIRMAN: Mr. Case?

13 MR. CASE: I don't want to prolong this, but
14 if Mrs. Bothe's motion is founded upon the notion that
15 the Legislature is a political organization and not a
16 fact finding organization, it will fail. If a Legislature
17 is a fact finding body to make laws, upon the most dis-
18 cerning examination of the fact and it seems to me that
19 Legislature should have all the powers it can muster to
20 get at the facts and if these do include the subpoena power
21 and it seems to me perfectly obvious that the Legislature

1 should be allowed to exercise it.

2 THE CHAIRMAN: Mr. Sykes?

3 MR. SYKES: I would like to announce that I
4 can't vote on this thing one way or the other because
5 I haven't sufficient facts. I think this is a matter on
6 which an intelligent vote requires the benefit of a
7 research memorandum as to the existence of the problem,
8 the problem of the abuse of the power, the mechanism
9 of other State Constitutions and the like. I am just
10 blank on that.

11 THE CHAIRMAN: Any further discussion or
12 comment?

13 DR. BARD: I do want to add one thing. Mr.
14 Sykes' lack of supportive data is due in part, is that
15 this is the first full Commission meeting. We have talked
16 this out, perhaps not to the fullness that you desire.

17 MR. SYKES: I am merely explaining my ignorance.

18 THE CHAIRMAN: Any further comment? You ready
19 for the question? The question arises on the motion that
20 the Section be so drafted as to impose limitation on
21 either the granted or inherent power of the Legislature

1 to require production of witnesses and records by requir-
2 ing a two-thirds vote of the appropriate House authorized
3 to compel the attendance of a witness against his will
4 before the Legislature or any legislative committee or
5 the production of books and records.

6 You ready for the question? Those in favor,
7 please signify by a show of hands. Lost, 6 to 13.

8 Does anybody else desire to submit a motion?

9 MR. HOFF: I would like to submit the same
10 motion and eliminate the two-thirds and make it a simple
11 majority of the Members present.

12 THE CHAIRMAN: Can we do that without further
13 discussion?

14 MR. GENTRY: Call the question.

15 THE CHAIRMAN: The same motion except that the
16 required action of the legislation be by simple majority
17 of the Members present instead of two-thirds, of the
18 appropriate House, I take it?

19 MR. HOFF: Yes.

20 THE CHAIRMAN: Those in favor, signify by a
21 show of hands. Contrary. The motion is carried, 13 to 6.

1 Now, does anybody desire any further limitation
2 to be submitted to the Committee?

3 Mr. Sayre?

4 MR. SAYRE: I am not sure if this is a limita-
5 tion. I am not sure as to the scope of the rules and
6 procedure. We have no limitation here. My first question
7 is to whether --

8 THE CHAIRMAN: You are talking about another
9 part of the Section. Let's finish with this particular
10 Section first.

11 Mr. Bond?

12 MR. BOND: I would like to ask, as a point of
13 information, is the import of the last vote before any
14 witness can be subpoenaed, any document be produced, it
15 has to be a majority vote of the House concerned, is that
16 right?

17 THE CHAIRMAN: If he objects.

18 MR. CASE: The majority of those present.

19 MR. BOND: If the Commission will excuse me, my
20 only comment is, the last motion, it is impossible to
21 carry out, because how in the world will you tell when

1 somebody objects?

2 THE CHAIRMAN: He will say so or not show up.
3 In order to compel his attendance against his objection,
4 you have to have the requisite vote.

5 Mr. Case?

6 MR. CASE: Does the vote we have just taken,
7 it is always good to know what you have voted on, does
8 the vote we have just taken imply that the Constitution
9 will be so written to withdraw from the Legislative
10 Council the subpoena power that it has?

11 JUDGE ADKINS: Certainly should apply to the
12 Legislative Council.

13 THE CHAIRMAN: I would take it that the
14 Legislature or its Committees would include the Legisla-
15 tive Council.

16 MR. CASE: Then if I may, Mr. Chairman, I move
17 that the vote be reconsidered because it seemed to me that
18 what Mr. Hoff's motion went to was not that, but merely
19 to the Legislature as it sat in Annapolis and was in
20 session but to preclude the Legislature from having the
21 fact finding powers that the Committees must have during

1 the off season to my mind would be a very serious blow
2 to the ability of the General Assembly to find the facts.
3 I sincerely believe that if the, as we go forward we
4 won't see things that happened like the savings and loan
5 scandals a few years ago, go undected by the Legislature,
6 and had the Legislature exercised its powers in those
7 areas as I think it would today, at that time a lot of
8 grief in this State would have been avoided.

9 So, if that is what Stan Hoff's motion went
10 to, then I say it is, we are just hamstringing the legis-
11 lative fact finding authority, and I think that we should
12 reconsider the vote, and I would ask that it be recon-
13 sidered and substitute in lieu thereof the idea that
14 Mr. Sykes suggested, namely, that this matter be referred
15 to the Committee with the idea that appropriate research
16 be given to it because actually we are talking about
17 a very serious matter; and I don't think we have enough
18 facts.

19 THE CHAIRMAN: Is there a second?

20 MR. CLAGETT: I second that except for the
21 latter part of it.

1 MR. BOND: I second the whole motion.

2 THE CHAIRMAN: It might be better to separate
3 it, Mr. Case.

4 MR. CASE: I move that it be reconsidered.

5 MR. CLAGETT: I second it.

6 THE CHAIRMAN: Any further discussion, only
7 on the question of reconsideration.

8 MR. HOFF: I think Mr. Case's motion is based
9 upon the premise that the Legislative Council now has the
10 power of subpoena. I don't think it has. I have
11 served on the Legislative Council, and I have never
12 heard of a subpoena being issued.

13 JUDGE ADKINS: I have never heard of it being
14 issued by the Legislature or the Legislative Council.

15 THE CHAIRMAN: Mr. Miller?

16 MR. MILLER: It seems to me, Mr. Chairman,
17 that we can put something about this in the Constitution,
18 if we do that, we are going into an awful lot of detail.
19 It can be presumed that the legislative body is respon-
20 sible and will not delegate authority to committees to
21 just make a shotgun approach to any of these things, but

1 ought we to have the Legislature limited in the Con-
2 stitution? Now, we have already said they are only to
3 be in session at certain times. We have also adopted
4 the principle, I think, that a committee can work during
5 the whole year. How could a committee get a witness if
6 everybody that was, or had to have the Legislature con-
7 vene in order to make them attend against their will? It
8 just seems to me you are tying the hands of the whole
9 investigative process.

10 THE CHAIRMAN: Any further discussion? This
11 is on the motion to reconsider. Ready for the question?
12 A vote Aye will reconsider; a vote No will not reconsider.
13 All those in favor of reconsideration, signify by a show
14 of hands. Contrary. The motion is carried, 13 to 7.

15 Now, the question arises then on Mr. Hoff's
16 motion.

17 MR. HAILE: Are we going to discuss that now?

18 THE CHAIRMAN: Further discussion.

19 MR. HAILE: There are two things involved,
20 one is the issuance of subpoena and the other is the
21 punishment of persons who refuse to obey a subpoena and

1 who punishes in this situation, the Legislative Council,
2 the Committee, or the Legislature as a whole?

3 MR. SYKES: I can answer that.

4 THE CHAIRMAN: Mr. Miller?

5 MR. MILLER: I would like if permitted to
6 amend the, move an amendment to the proposal, and that is
7 to just strike all of this Section out of the Constitution.
8 We should leave this matter to the Legislature and the
9 courts. We are hamstringing people, we are trying to
10 keep this as short a document as we can --

11 THE CHAIRMAN: Let me interrupt. That sugges-
12 tion was made earlier when you were out of the room,
13 and nobody wanted to move it at that time. Would you
14 accept such an amendment, Mr. Hoff?

15 MR. HOFF: No, sir.

16 THE CHAIRMAN: Then I would suggest instead
17 of making it as a substitute motion, make it as a separate
18 motion later if you would, please. Any further discussion?

19 MR. BOND: What is the motion before us now?

20 THE CHAIRMAN: Motion before you is that in
21 order to compel the attendance of a witness against his

1 will or production of books and records before the
2 Legislature or any of the committees of the Legislature
3 a two-thirds vote of the appropriate House would be re-
4 quired, I am sorry, a simple majority of those present
5 of the appropriate House would be required.

6 MR. HAILE: I may answer my own question, I
7 think. I think that means in a contempt proceeding a
8 majority vote of the House is required. I think that
9 is what we just voted, that is after a witness refuses
10 to obey a subpoena.

11 THE CHAIRMAN: We are not trying, Mr. Haile,
12 to phrase the language, we are simply taking the sense
13 of the group, and I think Mrs. Bothe's original motion on
14 which this motion is founded was that if the person were
15 willing to appear voluntarily or produce the records
16 voluntarily, it would not be necessary to have the vote
17 of the House, but if the person objected to producing
18 the records or appearing, that it would be necessary.
19 We are not trying to get the language.

20 Mr. Case?

21 MR. CASE: Mr. Chairman, I think that after

1 listening to the debate and having my good friend,
2 Stan Hoff, say the Legislative Council doesn't have
3 the power, and I am pretty sure I have read in the statutes
4 that it does have the power, I think that this discussion
5 would be much more meaningful if each of us had an oppo-
6 tunity to read and study a research memorandum that the
7 Commission's staff would make. I am therefore strongly
8 urging that before we try to vote on something that some
9 of us at least are confused about, and I will certainly
10 say that I am, that we have that opportunity; and there-
11 fore I would like to make a motion in substitution
12 for the one that is before the Commission, and that is
13 that this matter be re-referred to the Committee with
14 appropriate instructions that its research staff bring us
15 back a meaningful document from which we can base a
16 judgment.

17 MR. CLAGETT: I would second that.

18 THE CHAIRMAN: Mr. Hoff, will you second the
19 amendment?

20 MR. HOFF: No, sir, I will not, but I will
21 second if the motion is defeated.

1 THE CHAIRMAN: You want to propose it as a
2 substitute, Mr. Case?

3 MR. CASE: Yes.

4 THE CHAIRMAN: The question will arise on the
5 substitution of Mr. Case's motion. Any discussion?
6 You ready for the question? The vote now is simply on
7 the question of whether Mr. Case's motion to refer back
8 to the Committee should be substituted for Senator Hoff's
9 motion.

10 The question that is now before you is not
11 whether you are for or against Mr. Case's motion, but
12 whether you want to substitute his motion for Senator
13 Hoff's motion.

14 All those in favor of the motion, the substi-
15 tution that is, signify by a show of hands. The motion
16 is carried, 16 to 2.

17 MR. BOND: I would like to ask to be informed
18 as to what is going to happen in other States, in that
19 memorandum?

20 DR. BURDETTE: I would like to suggest the
21 Committee consider the memorandum on how such a matter

1 would be enforced.

2 The question in my mind is if a person who
3 got over the State line would not be out of the jurisdic-
4 tion of the State. I am not sure of this, but I am sure
5 he would. I would like to know about that.

6 MR. HAILE: Also a question of whether a
7 committee of the General Assembly might resort to the
8 courts to enforce it.

9 THE CHAIRMAN: Any further discussion? You
10 ready for the question?

11 All those in favor of the motion, signify by
12 saying Aye.

13 (Chorus of Ayes.)

14 THE CHAIRMAN: Contrary, No.

15 (There was no response.)

16 THE CHAIRMAN: The Ayes have it, and it is so
17 ordered.

18 Now, Dr. Bard, this leaves us for consideration
19 on this Section the question of the two-thirds in the last
20 sentence.

21 DR. BARD: Yes, sir.

1 THE CHAIRMAN: Now, does the Committee still
2 recommend what is drafted here, that is two-thirds of all
3 Members, meaning the elected Members?

4 DR. BARD: We have a feeling that the latter
5 expulsion is a pretty serious extraordinary event, and
6 we think the two-thirds would be more in order than
7 four-fifths.

8 THE CHAIRMAN: Any comment or questions? Any
9 discussion?

10 Mr. Sayre?

11 MR. SAYRE: This raises one of my questions as
12 to whether you could be expelled a second time for the
13 same offense.

14 DR. BARD: Say that again.

15 MR. SAYRE: Can you be expelled a second time
16 for the same offense?

17 THE CHAIRMAN: What do you mean by the second
18 time? After you have been reelected or something?

19 MR. SAYRE: It is possible. For instance,
20 let's take two occasions, one you are expelled for dis-
21 orderly conduct, you get reelected, and let's say you

1 have the same disorderly conduct. Now, two, you are
2 elected, but you are underage. The people put you back
3 in. Well, I guess that is a constitutional question.

4 THE CHAIRMAN: I take it from the way the
5 language is drafted, the Committee intends to confer on
6 the Legislature the power to expel a Member at any time
7 for any reason by two-thirds vote.

8 MR. SAYRE: What about double jeopardy?

9 THE CHAIRMAN: At any time for any reason.

10 MR. SAYRE: The position of double jeopardy
11 is waived in here.

12 MR. GENTRY: That is criminal.

13 THE CHAIRMAN: That is not applicable here.

14 MR. SAYRE: If that is clear.

15 THE CHAIRMAN: I would think so. It seems to
16 me it is clear when it says that two-thirds of all the
17 Members may expel another Member without limitation.
18 It is not a punishment. It is simply an expulsion.

19 JUDGE ADKINS: May I ask what the word, punish-
20 ment, means in this context?

21 THE CHAIRMAN: Dr. Bard?

1 JUDGE ADKINS: Can they imprison?

2 DR. BARD: This is language that has been used
3 for some time, and I assume it means a little more than
4 expulsion, doesn't it? Ask him to leave.

5 JUDGE ADKINS: May punish and expel.

6 THE CHAIRMAN: Has it been suggested that a
7 Legislature can imprison?

8 DR. MICHENER: We have in the past. If you
9 don't mind my saying something, on this double jeopardy,
10 because it actually happened in the New York State Legis-
11 lature where they expel Members for being members of the
12 Socialist party, the Norman Thomas party, and were re-
13 elected by the constituents again and were expelled a
14 second time for the same membership.

15 THE CHAIRMAN: Any further comment or question,
16 discussion?

17 Mr. Sayre, you had a question with respect to
18 rules of procedure in the first two lines at the top of
19 Page 7.

20 MR. SAYRE: Well, this is one of them. Another
21 has to do with the records, well, actually, the next ques-

1 tion, I guess, would come under Section 15. All right,
2 how about people who attend a session of the Legislature?
3 Under what?

4 THE CHAIRMAN: I am sorry I can't hear you.

5 MR. SAYRE: Under what conditions can the body
6 exclude public attendance?

7 THE CHAIRMAN: I am not sure I understand your
8 question.

9 DR. BARD: Under what conditions might they
10 have so-called executive sessions, I am assuming.
11 Wouldn't that be under their rules?

12 DR. WINSLOW: Yes.

13 MR. DELLA: Yes.

14 DR. BARD: We feel that ought not to be in
15 the Constitution.

16 MR. SAYRE: In other words, they could change
17 their rules in a certain period of time to exclude public
18 attendance.

19 THE CHAIRMAN: Apparently so.

20 DR. BARD: They could, but we would have faith
21 in them that they wouldn't, and this goes back to the

1 broad concept that we have set forth, Mr. Sayre, through-
2 out, namely, that certainly we have to have faith in this
3 body that they are giving more and more power to.

4 Dr. Winslow has a point.

5 THE CHAIRMAN: Dr. Winslow?

6 DR. WINSLOW: In reference to Judge Adkins'
7 question about punishment, would you be better satisfied
8 if the word were, disciplined? I would.

9 JUDGE ADKINS: I think this is a fairly broad
10 power to say, may punish a Member without any limitation.

11 THE CHAIRMAN: Let me call your attention --
12 Mr. Brooks has just handed me, called my attention to
13 Section 23 of Article III of the present Constitution
14 which says, Each House may punish by imprisonment during
15 the session of the General Assembly any person not a
16 Member for disrespect or disorderly behavior in its
17 presence or for obstructing any of its proceedings or any
18 of its officers in the execution of their duties, provided
19 such imprisonment shall not at any one time exceed ten
20 days.

21 DR. BARD: It is Section 19, Mr. Chairman.

1 You will note that the present Constitution uses the
2 word, punish.

3 THE CHAIRMAN: Well, Section 19 uses the words
4 you have here.

5 DR. BARD: Pretty much.

6 THE CHAIRMAN: But does not spell it out.
7 Now, Judge Adkins, you were making a comment in reply to
8 Dr. Winslow's statement.

9 JUDGE ADKINS: Dr. Winslow suggested that the
10 word, punish, be changed to discipline. I think that is
11 a milder word.

12 DR. WINSLOW: And would be used more.

13 JUDGE ADKINS: Would be more appropriate.

14 THE CHAIRMAN: Dr. Bard?

15 DR. BARD: My own feeling is that discipline
16 may not be strong enough in some situations. I don't have
17 any strong feelings about it. It is a matter of semantics
18 at this time. The present Constitution uses the word,
19 punish.

20 THE CHAIRMAN: Want to make a motion on it?

21 JUDGE ADKINS: I don't feel strong enough to

1 make a motion. I will accept the Committee's thinking.

2 THE CHAIRMAN: Any further discussion of this
3 Section?

4 MR. SYKES: I see in Section 19 of Article III
5 the language.

6 THE CHAIRMAN: The present Constitution.

7 MR. SYKES: Yes, of the present Constitution, the
8 language apparently gave Mr. Sayre the trouble he had.
9 There is a provision that no member shall be expelled a
10 second time for the same offense. Now, that provision
11 has been left out of the redraft. That provision also
12 indicates that expulsion doesn't mean complete disquali-
13 fication as a legislator, creating a vacancy, but means
14 simply banish. From the right to take the floor or to
15 be on the floor for a particular period. I would like
16 to ask the Committee whether it meant any change in sub-
17 stance, or whether it so interpreted the word, expel,
18 whether it means to broaden the power to expel and the
19 effect of the power and why it was that the so-called
20 double jeopardy provision was not included in the redraft.

21 THE CHAIRMAN: Dr. Michener?

1 DR. BARD: In the last Report, Fifth Report,
2 commentary in the Fifth Report, Page 14, the following
3 sentence, similar language, except that it eliminates the
4 provision that no member shall be expelled the second time
5 for the same offense. If there is any restriction on the
6 House, it should be left to the House in question when
7 acting on the expulsion of the member. It would be in the
8 rules of the House itself.

9 We were trying to shorten this, and we felt
10 that there was no need for setting this forth other than
11 in the rules itself.

12 MR. SYKES: What did you mean by the term, expel
13 a member? Did you mean to disbar him from the club com-
14 pletely or simply chase him off the floor for a while?

15 DR. BARD: It could be either.

16 MR. SYKES: I don't think the present Constitu-
17 tion means either. I think it necessarily means just
18 to deprive him of the privilege of the floor.

19 THE CHAIRMAN: Why do you say that?

20 MR. SYKES: Because you couldn't very well
21 expel a Member, that is disqualify him or disbar him as

1 a legislator twice. You could only do it once.

2 THE CHAIRMAN: You could in the example
3 Dr. Michener gave you, where the person was expelled for
4 being a Socialist, was reelected as a Socialist, and
5 expelled a second time.

6 DR. JENKINS: They have exactly the case in
7 the Georgia Legislature now, in the Bond case which is
8 being considered by the Supreme Court as a Federal right.

9 MR. SYKES: That would raise all kinds of
10 questions as to whether the Legislature is a continuing
11 body, and as the Legislature meets only for a particular
12 time only for the term for which it is elected, as I think
13 there is probably good cause to argue, then expel, as it
14 is used in the Constitution, with the double jeopardy
15 provision would probably have to mean simply deny the
16 right to take part on the floor.

17 I think that the present Constitution has some
18 sense to its provision because it is a kind of safeguard
19 against the political motivation to try to change political
20 alignments or to take political revenge against somebody.

21 If he is punished, he should take his punishment.

1 and that should be it.

2 THE CHAIRMAN: You want to submit a motion?
3 As I understand the Committee, they deliberately left
4 out the qualifying language.

5 MR. SYKES: I would submit the motion that at
6 the very least, the term, expel, be changed to make clear
7 whether it means disqualified for the rest of the session
8 or forever or simply denied the right to take part on
9 the floor for a stated time. I think it should not be the
10 way it is. I am not sure which is best.

11 THE CHAIRMAN: Your motion at the moment is that
12 the Committee consider, consider clarifying the word
13 to indicate whether they mean expulsion would mean such
14 as to create a vacancy or something else?

15 MR. SAYRE: Mr. Chairman --

16 THE CHAIRMAN: Wait just a second. Is there
17 a second to the motion? The motion fails for lack of a
18 second.

19 MR. SAYRE: What was the motion?

20 THE CHAIRMAN: Nothing to discuss.

21 MR. SAYRE: Well, we are still discussing the

1 point, I guess.

2 THE CHAIRMAN: Which point?

3 MR. SAYRE: The meaning of expel.

4 THE CHAIRMAN: Right, go ahead.

5 MR. SAYRE: Was the motion to have clarification?
6 Was that the motion?

7 THE CHAIRMAN: Yes.

8 MR. SAYRE: I will second that.

9 THE CHAIRMAN: Discussion?

10 MR. SAYRE: In Section 16 where we talk about
11 impeachment, it seems to me that we don't have a much
12 more restricted meaning for the word, expel; we are actually
13 giving impeachment powers under the word, expel, and I
14 think that we must define the word, expel, and I am certainly
15 for the provision of not being punished a second time for
16 the same offense.

17 DR. MICHENER: It has the term, punish. For
18 lesser things, by suspending them from the floor or
19 revoking his right to sit in the Legislature as a whole.
20 I think it is quite clear what the Committee meant, and I
21 thought it was clear here.

1 THE CHAIRMAN: Any further discussion? Ready
2 for the question?

3 The question arises on the motion that the
4 Committee consider clarifying the use of the word, expel,
5 so as to indicate whether it means expulsion in the
6 sense of creating a vacancy or something less.

7 All those in favor, signify by a show of hands.
8 Contrary?

9 The motion is lost, 6 to 12. Any further dis-
10 cussion of this Section?

11 DR. BARD: Two-thirds okay?

12 THE CHAIRMAN: I didn't understand there was
13 any objection to the two-thirds in this particular situa-
14 tion. Does anybody desire to submit a different pro-
15 portion? This is two-thirds of the whole membership, the
16 Members elected. We move on to Section 15 on Page 8.

17 DR. BARD: Each House shall keep a journal of
18 its proceedings and cause the same to be published. No
19 bill shall become a law unless it be passed in each House
20 by a majority of the Members of that House.

21 We change that at the recommendation of the

1 Commission. It was our desire that it be a majority of
2 the Members present, but we revised it at your recom-
3 mendation at the last Commission session, and on its
4 passage, the Yes and No votes be recorded in the journal
5 of each House, nor shall any resolution requiring the
6 action of both Houses be passed except in the same manner.

7 THE CHAIRMAN: Any question? Any comment?

8 Mr. Sayre?

9 MR. SAYRE: I know this might be slightly re-
10 dundant, but I would like to have the word, public,
11 inserted in there.

12 THE CHAIRMAN: The word what?

13 MR. SAYRE: The word, public. Each House
14 shall keep a public journal or in some way in which it
15 is known, this journal is available to the public.

16 THE CHAIRMAN: Isn't the requirement that it
17 be published sufficient?

18 MR. SAYRE: I am not sure. We do have the
19 word in the past, having it a matter of public record,
20 and I am just not clear as to whether public makes it a
21 matter of public record. That is my whole question.

1 THE CHAIRMAN: Any comment?

2 DR. BARD: I wouldn't object. I think it is
3 certainly implied, and we hope understood here. I see no
4 objection.

5 THE CHAIRMAN: I would think it would be.

6 MR. HOFF: Actually, it is published many
7 months after the session, and if you wait for publication,
8 you may have to wait until the session is over.

9 MR. BROOKS: Since the sessions are public, I
10 think that would take care of it.

11 DR. BURDETTE: Yes, but some sessions are not
12 public.

13 DR. BARD: I don't think we ought to belabor
14 the point. I think adding the word, public, would do
15 no harm, and might do some good.

16 THE CHAIRMAN: Any objection to that? If not,
17 it is so ordered. We move on to Section 16.

18 MR. DELLA: One question, Mr. Chairman, on
19 Section 15. I gather the feeling is that the legislation
20 is to be passed by the majority of the Members present
21 and not a constitutional majority as such?

1 THE CHAIRMAN: This is a majority of the
2 Members of the House which means elected. Section 16,
3 on Page 9.

4 DR. BARD: The House of Delegates shall have
5 the sole power of impeachment in all cases provided by
6 law but a majority of all the Members must concur in the
7 impeachment. All impeachments shall be tried by the
8 Senate, but no person shall be convicted without the
9 concurrence of two-thirds of all the senators.

10 MRS. BOTHE: Can we have an explanation?

11 THE CHAIRMAN: Dr. Bard?

12 DR. BARD: Dr. Michener?

13 DR. MICHENER: Explanation of what?

14 MRS. BOTHE: It doesn't make sense to me. It
15 reads as though there are two contradictory powers granted,
16 one to the Senate and one to the House.

17 THE CHAIRMAN: No, the impeachment is by the
18 House. That is the indictment, so to speak, and the trial
19 is by the Senate. That is the conviction if there is a
20 conviction.

21 DR. BARD: Looks pretty much like presidential

1 impeachment, Mrs. Bothe.

2 MR. CASE: May I throw a curve?

3 THE CHAIRMAN: Mr. Case?

4 DR. BARD: We accepted this last time, but it
5 is all right to reopen it.

6 MR. CASE: If we vote for this, are we by
7 inference voting for bicameral legislation?

8 DR. BARD: No, because our body has set this
9 up so the adjustment can be made, and when we run into
10 something like this --

11 MR. CASE: What would be the adjustment?

12 THE CHAIRMAN: Let me cut across. The
13 directive of the Commission was that alternate provisions
14 be prepared for both so they obviously would have to
15 draft an alternate for this providing for unicameral.

16 DR. BARD: We just have the same House?

17 MR. CLAGETT: I have one question here -- the
18 difference between impeachment and expulsion if you get
19 expelled permanently?

20 THE CHAIRMAN: Well, I would take it that the
21 impeachment referred to here is impeachment in cases pro-

1 vided by law which would be other than Members of the
2 Senate and House, and expulsion from the Legislature would
3 be under the previous Section and would not be by process
4 of impeachment.

5 MR. CLAGETT: Assuming you are impeached,
6 then what happens?

7 THE CHAIRMAN: Who is impeached?

8 MR. CLAGETT: The man who is being impeached
9 by the House, tried by the Senate, and by a two-thirds
10 concurrence has been convicted. What happens to him?

11 THE CHAIRMAN: He vacates office.

12 MR. CLAGETT: It doesn't say so.

13 DR. BURDETTE: It needs to say, shall be con-
14 victed, but no person shall be convicted -- that is con-
15 victed and removed from office without the concurrence.

16 THE CHAIRMAN: Isn't that implicit in the
17 word, impeachment?

18 DR. BURDETTE: No.

19 MRS. BOTHE: Does it necessarily carry with it
20 the loss of office?

21 MR. CASE: No. One president of the United

1 States was impeached.

2 THE CHAIRMAN: Mr. Clagett has the floor.

3 MR. CLAGETT: I agree with Dr. Burdette that
4 unless there is some further definition or provision,
5 what happens after impeachment? We are left without
6 knowledge of what happens from there and conviction with-
7 out any further punishment. I would move that the Committee
8 consider the providing of what shall be the effect of
9 impeachment.

10 THE CHAIRMAN: I might add to that, Governor
11 Lane has just called my attention to Section 3 of Article I
12 of the United States Constitution which contains detailed
13 provisions as to what follows from a judgment of impeach-
14 ment. It is on Page 114 of the red book.

15 MR. BROOKS: Section 26 of Article III, the
16 State Constitution.

17 THE CHAIRMAN: Dr. Bard, what is your comment
18 as to the suggestion made by Mr. Clagett?

19 DR. BARD: It would do no harm to insert it,
20 that no person shall be convicted or removed from office
21 without the concurrence. This may be in the sense giving

1 the definition of the significance of conviction. Is
2 Dr. Winslow shaking his head on that?

3 MR. CLAGETT: That wouldn't work. Because
4 then you have it tied in with expulsion.

5 DR. WINSLOW: Members of the Legislature are
6 not impeached.

7 THE CHAIRMAN: The process of removal in the
8 Legislature is under the other Sections, it is expulsion.
9 You are talking about impeachment of officers other than
10 senators or delegates. Dr. Bard, would it not be worth-
11 while for the Committee to consider the substance of
12 something like is in the United States Constitution?

13 DR. MICHENER: Could I point out that the
14 Federal Constitution puts a limitation on the power of
15 impeachment?

16 THE CHAIRMAN: I understand that.

17 MR. BROOKS: But the word, impeachment, implies
18 what the charge is without saying it. If you are con-
19 victed of that charge which is removal of office, then that
20 would follow.

21 DR. BURDETTE: There is no penalty, only a

1 moral reprimand.

2 On Page 22, Section 26, Article III, would
3 mean that no Governor of Maryland could be removed from
4 office by impeachment.

5 THE CHAIRMAN: I wouldn't agree with that con-
6 clusion.

7 DR. BURDETTE: He could be impeached, convicted,
8 but that is only a moral reprimand.

9 THE CHAIRMAN: It seems to me the discussion
10 points up there is a diversion of views as to the word,
11 impeachment. Can the Committee clarify it?

12 MR. SAYRE: I am thinking of some language
13 that could be tacked on here for the penalty to be pro-
14 vided by law.

15 DR. BURDETTE: He could be removed from office.

16 MR. SAYRE: Yes. I like this language this
17 is closer to the existing Constitution, and if it is
18 appropriate, I would move to substitute the Section that
19 reads, the Governor, the heads of the principal depart-
20 ments, the judicial officers and such other officers of
21 the State as may be designated by law are subject to im-

1 peachment. Impeachment must originate in the House of
2 Delegates and must be approved by a two-thirds vote of
3 all the delegates. The Senate shall by law provide pro-
4 cedures for trial of impeachment and for removal from
5 office of officers convicted. The Senate shall try
6 all impeachment, and no person shall be convicted without
7 the concurrence of two-thirds of all the senators.

8 To me that is clearer than what we have in
9 Section 16.

10 THE CHAIRMAN: But it also embodies a number
11 of different ideas.

12 DR. BURDETTE: I wonder if Mr. Sayre would
13 put into his motion the thought that senators shall be
14 removed. That is in the present Constitution, and it
15 has been very meaningful as in the case of Andrew Johnson,
16 a great many people wouldn't vote for the conviction on
17 political grounds because they were under oath, and it
18 becomes a matter of religion.

19 THE CHAIRMAN: Mr. Sayre, I think it would be
20 inappropriate for us to try to pass on that language that
21 you have read. Would you rephrase your motion that it be

1 recommitted to the Committee to consider that as well as
2 the other suggestions that have been made?

3 MR. SAYRE: I would so move.

4 THE CHAIRMAN: Is that your motion?

5 MR. SAYRE: Yes.

6 THE CHAIRMAN: Is there a second to the motion?

7 MR. DELLA: Second.

8 THE CHAIRMAN: Dr. Bard, you have any comment?

9 MR. BROOKS: The Committee did consider that
10 very language before and had reason for rejecting it.
11 Rather than take it back to the Committee and go over
12 the same thing again --

13 DR. BARD: What is a principal officer? We went
14 over that again and again.

15 MR. BROOKS: It is also pointed out that the
16 Judicial Article carry its own provision for removal;
17 otherwise they are provided for in the language just
18 recommended, and the officers provided for in the Consti-
19 tution at the moment would not be in the Article. This
20 leaves the Governor.

21 THE CHAIRMAN: Mr. Miller?

1 MR. MILLER: It also occurs to me that it is
2 belaboring the Constitution to provide for special oath
3 or a special affirmation whenever a member of the legis-
4 lative body takes an oath of office. You don't have a
5 judge every time you make an affidavit or take an oath.
6 I think we are getting down into too many details. A
7 senator is not going to vote one way under oath and
8 another way because he didn't put his hand on the Bible,
9 and we are getting this down to the point where it is
10 ridiculous.

11 MR. CLAGETT: Mr. Chairman, would it be
12 ridiculous, though, to add after the last word, senators,
13 on oath or affirmation, and then the further phrase,
14 appropriate word shall not extend further than removal
15 from office?

16 THE CHAIRMAN: That you might make as a separate
17 motion that would be embodied in this if this passes.
18 At the moment, the motion before you is Mr. Sayre's
19 motion to recommit to consider the language he has read,
20 and Dr. Bard says the Committee has already considered
21 that.

1 DR. BARD: We are.

2 THE CHAIRMAN: And adopted this language in
3 preference to it. Now, is there any further discussion?
4 You ready for the question? All those in favor of the
5 motion to recommit the Section to the Committee, signify
6 by a show of hands. Contrary. The motion is lost,
7 2 to 16.

8 Mr. Sykes?

9 MR. SYKES: Mr. Chairman, I tried my hand at
10 drafting. I would like to make this motion. All impeach-
11 ments shall be tried by the Senate and any person impeached
12 shall be convicted upon concurrence of two-thirds of all
13 the senators and shall thereupon forfeit his office.

14 MRS. BOTHE: Second.

15 MR. CASE: That means, if I understand it, an
16 optimum case. Is it not true in some cases impeachment
17 implies less than the optimum sentence such as a suspen-
18 sion or something of that nature? I am not sure that
19 is the case.

20 MR. SYKES: Why go through all this?

21 THE CHAIRMAN: Dr. Winslow?

1 DR. WINSLOW: I believe in the United States
2 Constitution it says that punishment shall not go farther
3 than removal from office and disqualification to hold office
4 again, which implies there might be a lesser sentence
5 than removal.

6 MR. CASE: I would like to move --

7 THE CHAIRMAN: Wait just a second. We have a
8 motion before us.

9 MR. CASE: I would like to amend it.

10 THE CHAIRMAN: Go ahead.

11 MR. CASE: May I go ahead?

12 THE CHAIRMAN: Yes.

13 MR. CASE: I would like to amend Mr. Sykes'
14 motion and by appropriate language to suggest the same
15 thought that is in the Federal Constitution, namely,
16 that judgment in cases of impeachment shall not extend
17 further than removal from office.

18 THE CHAIRMAN: You accept the amendment,
19 Mr. Sykes?

20 MR. SYKES: That is acceptable to me.

21 MR. CLAGETT: I would like to further amend it

1 to put them under oath or affirmation.

2 THE CHAIRMAN: Do you accept the amendment,
3 Mr. Sykes?

4 MR. SYKES: I do not accept it.

5 THE CHAIRMAN: You want to move to amend the
6 motion?

7 MR. CLAGETT: I so move.

8 THE CHAIRMAN: Is there a second to Mr. Clag-
9 ett's motion to amend Mr. Sykes' motion? It fails for
10 lack of second.

11 DR. BURDETTE: I will second it so I may get
12 the floor.

13 THE CHAIRMAN: Now you have the floor on the
14 question of the amendment.

15 DR. BURDETTE: I have no desire to bring up
16 the word, oath. I am not trying to get into this matter.
17 What I am trying to do, and I am wondering if Mr. Clagett
18 would accept this view, and Mr. Sykes in some fashion to
19 make this a judicial proceeding in the minds of the
20 senators instead of a political proceeding. However that
21 can be worded, I would like to get it down. I think that

1 is the old fashioned meaning in the Federal Constitution.

2 MR. SYKES: The reason I didn't accept the
3 amendment is to say that the Senate shall do something on
4 oath doesn't say very much unless you specify the oath,
5 and if you say in the Constitution that the oath must be
6 an oath to well and truly try the issue on the impeachment
7 and judicial manner and not be swayed by politics and
8 all that kind of stuff, then you are getting very un-
9 wieldy for constitutional rights.

10 So I agree with Congressman Miller that this
11 doesn't belong.

12 THE CHAIRMAN: The present language, I think,
13 as you pointed out, is that the senators shall be on
14 oath or affirmation to do justice according to the law and
15 evidence.

16 Any further discussion of Mr. Clagett's motion
17 to amend Mr. Sykes' motion?

18 MR. CLAGETT: May I say one further thing? I
19 think it provides that the proceeding shall be on oath
20 and affirmation, that it will then require the forming of
21 such an oath and that would well include the factors we

1 are trying to take care of here. So I am really trying
2 to avoid unnecessary language because I would feel that
3 the definition of the oath would be one which would put
4 them to a test outside of the actual political forum
5 and into the judicial deliberations.

6 THE CHAIRMAN: Any further discussion?

7 Dr. Michener?

8 DR. MICHENER: I would like to make a comment.
9 The Federal restriction, as I understand it, as implicit
10 in this motion restricts the punishment for impeachment
11 to removal from office and no other things, and if you
12 make it less, unless you restrict salaries or something
13 of that sort and the minute you do that, you get into the
14 bill of attainder which is forbidden under the Constitu-
15 tion.

16 MR. SYKES: The reason it didn't make any
17 difference to me is that the Federal language has
18 authoritative construction, and we would, in effect, be
19 borrowing what they have done. I don't see how you can
20 get into too much trouble.

21 DR. MICHENER: It goes beyond. You can't execute

1 the man for it. You can only remove the man from office
2 and nothing more.

3 THE CHAIRMAN: No, you can do more because
4 under the Federal Constitution, you can disjoin him from
5 holding any office for profit, trust or honor in the
6 United States.

7 DR. MICHENER: You can't execute the man. You
8 have to have a separate trial for that.

9 MR. CASE: If you execute him, you don't need
10 to do anything about it.

11 THE CHAIRMAN: Are you ready for the question?

12 JUDGE ADKINS: What is the question?

13 THE CHAIRMAN: The question arises on Mr. Clag-
14 ett's motion to amend Mr. Sykes' motion to put in the last
15 sentence the requirement that the Senate in trying an
16 impeachment shall act under oath.

17 DR. BARD: Was there a second?

18 THE CHAIRMAN: Yes, Dr. Burdette.

19 DR. BURDETTE: Why not use the language in
20 the Constitution now? The present Constitution says,
21 shall be on oath or affirmation to do justice according

1 to the law and evidence.

2 THE CHAIRMAN: You accept that, Mr. Clagett?

3 MR. CLAGETT: Yes.

4 THE CHAIRMAN: The question now is on the
5 motion of Mr. Clagett to amend Mr. Sykes' motion. All
6 those in favor of the amendment, signify by a show of
7 hands. Contrary. The motion is lost, 4 to 16. The
8 question now arises on Mr. Sykes' motion with the amendment
9 which he accepted.

10 Any further discussion? Dr. Bard?

11 DR. BARD: I like Mr. Sykes' motion because I
12 think it puts the wording that we now have, it/sort of
13 negative form, places it in an affirmative form. I
14 think it strengthens it and really keeps us from the
15 requirement for adding the sort of thing that Mr. Bur-
16 dette and some others suggested. I wish you would read
17 it again.

18 THE CHAIRMAN: Can you give your addition,
19 Mr. Sykes?

20 MR. SYKES: All impeachments shall be tried
21 by the Senate and any person impeached shall be convicted

1 upon concurrence of two-thirds of all the senators, and
2 then there would follow the language.

3 MR. CASE: Judgments in impeachment shall not
4 extend further than removal from office, as in the Federal
5 Constitution.

6 THE CHAIRMAN: I would like to comment that
7 I am very much puzzled by that addition, because I had
8 thought and I may be wrong about it, that impeachment
9 meant only one thing, removal from office.

10 DR. WINSLOW: No, no.

11 THE CHAIRMAN: If you have this, what power is
12 there of the Senate to punish? What sort of punishment
13 could it mete out?

14 DR. BURDETTE: Resolution of censure.

15 THE CHAIRMAN: Imprisonment?

16 DR. BURDETTE: No resolution of censure.

17 THE CHAIRMAN: I say could it be imprisonment?

18 MR. CASE: That would extend further than to
19 the removal of office. I think it has to be something
20 related to his office. He might be suspended, he might
21 be, as Dr. Burdette said, censured, but it would all have
to affect in the ultimate, the removal of office, anything

1 other than that would be not allowed.

2 THE CHAIRMAN: Reduce his salary?

3 MR. BROOKS: Can't do that under other pro-
4 visions of the Constitution.

5 MR. CASE: That is on Page 114 of your red
6 book.

7 MR. SAYRE: I don't see any reason to have
8 anything other than removal of office.

9 THE CHAIRMAN: Any further discussion on
10 Mr. Sykes' amendment?

11 Dr. Jenkins?

12 DR. JENKINS: This uses the term, tried. Does
13 this make it crystal clear that the defendant would have
14 the right to appear in his defense with counsel?

15 THE CHAIRMAN: I would think so, Dr. Jenkins.
16 I think a trial would carry with it the implications of
17 due process.

18 DR. JENKINS: All that, including the oath?

19 THE CHAIRMAN: Dr. Burdette?

20 DR. BURDETTE: This query of Mr. Jenkins' leads
21 me to ask another question, and I do so in order to make
it in the record of our proceedings. I should like to

1 ask, Mr. Chairman, if it is the general intent of this
2 motion of Mr. Sykes that this be on the law and evidence
3 or that it be simply on the basis that we would rather
4 have another governor, another officer in his place? What
5 is the intent of the motion?

6 MR. SYKES: The language of the Section uses
7 the word, try, and the word, convey, and it seems to me
8 that that plus the history of the term, impeachment,
9 plus the Federal analogy, would indicate that it would
10 have to be a trial type hearing with the usual safeguards
11 connected with it, and that it is a semi-judicial func-
12 tion.

13 THE CHAIRMAN: Any further discussion? Ready
14 for the question?

15 MRS. FREEDLANDER: I call the question.

16 THE CHAIRMAN: The question arises on Mr. Sykes'
17 motion. Would you read the language again, Mr. Sykes?
18 I don't have it.

19 MR. SYKES: All impeachments shall be tried
20 by the Senate and any person impeached shall be convicted
21 upon the concurrence of two-thirds of all the senators.

1 MR. CASE: Only upon?

2 MR. SYKES: Begging your pardon, only upon a
3 concurrence of two-thirds of all the senators.

4 THE CHAIRMAN: And add your sentence.

5 MR. CASE: Judgments in cases of impeachment
6 shall not extend further than to removal from office.

7 THE CHAIRMAN: All right. You ready for the
8 question? Those in favor of the motion, signify by a
9 show of hands. Contrary, a show of hands. The motion
10 is carried, 19 to 1. Any further comment as to this
11 Section.

12 DR. BARD: Section 17 on Page 10. Any bill
13 may originate in either House of the General Assembly
14 and be altered, amended, passed, or rejected by the other.
15 Except during the first two days of a special session,
16 no final vote for passage of a bill shall be taken until
17 a bill shall have been printed and until the third calen-
18 dar day after introduction. This, we felt would take
19 care of the question that faced us last time, namely, if
20 there were a special session, that might last one day as
21 we have had from time to time, it would not be necessary

1 to let three calendar days elapse between the time of
2 introduction and passage, but on any other occasion, if
3 it were a two-day one, it could happen in two days, but
4 on any other occasion, we felt the matter of three calen-
5 dar days is sufficient.

6 THE CHAIRMAN: Any questions or comment?

7 Mr. Hoff?

8 MR. HOFF: How do you know how long a special
9 session is going to last?

10 DR. BARD: That is why we said no final bill
11 for passage of a bill shall be taken until a bill shall
12 have been printed and until the third calendar day.

13 MR. HOFF: Then any bill introduced on the
14 third day of a special session would by necessity prolong
15 the session until that bill could be passed?

16 DR. BARD: Yes. We felt that if, if it were
17 a special session that where actually cognizant of the
18 reason for the special session, you would have no reason
19 for not knowing. After all, you called the special session;
20 when the Governor calls a special session, he calls it for
21 a particular purpose. If someone else wants to introduce

1 some other matter this, in a sense, would keep them from
2 doing it. This would be true, wouldn't it, Governor Lane,
3 if you call a special session for one day, it is usually
4 for a particular purpose in mind?

5 GOVERNOR LANE: That is generally true, yes.
6 But it has virtue, because usually they know what they
7 are going to do. It is decided before they meet, and in ad-
8 dition to that, it can all be printed and can be informed.
9 I question the idea of prolonging it.

10 DR. BARD: This is why we felt for a special
11 session you need not be restricted on that matter of
12 three calendar days. We are with you on that.

13 THE CHAIRMAN: Mr. Case?

14 MR. CASE: Mr. Chairman, I suggest that this
15 Section 17 should be amended. In the third line from
16 the bottom after the word, printed, there should appear
17 for final reading. This is the law today, and it is a
18 safeguard, of course, bell ringers and amendments run
19 through the Legislature in all sorts of fashion. If the
20 bill is merely printed once, then you can amend it by
21 striking out everything after the word, a bill, and insert-

1 ing something entirely different in handwritten or hiero-
2 glyphics or any way to pass it through, and it would
3 become law. So, I think it should very frankly say, it
4 should become law until it is printed and for final read-
5 ing.

6 THE CHAIRMAN: You accept the change?

7 DR. BARD: We accept it.

8 THE CHAIRMAN: Any objection to the change?

9 After the word, printed, in the third from the last line,
10 insert the words, for final reading.

11 Any further question on this Section?

12 DR. MICHENER: Yes, didn't we strike the three
13 readings?

14 THE CHAIRMAN: ^{was} I/just about to ask.

15 DR. MICHENER: So it would have to be printed
16 before the final vote.

17 MR. CASE: The thought is the same.

18 THE CHAIRMAN: Well, why? If it is final
19 reading, it wouldn't make any difference, would it? You
20 are not saying the third reading.

21 MR. CASE: What you are saying is it ought to

1 printed and contain all the amendments and however you
2 want to phrase it, I don't know.

3 JUDGE ADKINS: In final form, would be better.

4 MR. CASE: Final form, good.

5 MR. SAYRE: A question.

6 THE CHAIRMAN: Mr. Sayre?

7 MR. SAYRE: I assume again that it would be
8 not necessary to say, and lying on the desk of the Members..

9 DR. BARD: No.

10 THE CHAIRMAN: Any further question?

11 Section 18.

12 DR. BARD: The style of all laws of this State
13 shall be, be it enacted by the General Assembly of
14 Maryland, and the General Assembly shall enact no law
15 except by original bill, and every law enacted by the
16 General Assembly shall embrace but one subject, and that
17 shall be described in its title, and no law nor Section
18 of law, shall be revived or amended by reference to its
19 title, or Section only, nor shall any law be construed
20 by reason of its title to grant powers or confer rights
21 which are not expressly contained in the body of the act,

1 and it shall be the duty of the General Assembly in a
2 meeting any Article or Section of the Code of Laws of
3 this State to enact the same as the said Article, or
4 Section would read when amended.

5 That follows pretty much what we did last time.

6 THE CHAIRMAN: Any questions or comments? If
7 not, then the last part of your Report deals --

8 DR. BARD: The last part deals with our own
9 requests, not yours, but ours, that we review those
10 Sections that we felt we had recommended as needing to be
11 deleted and what might be done and the last page, Page 12,
12 indicates our decisions in respect to Sections 30, 32,
13 34 and 35, and we certainly wish that anyone who is
14 serving on the Committee where we refer to the subject
15 matter belonging to it, by way of illustration, Section
16 32, feel free to indicate that we ought to be doing it,
17 not they, but here we are indicating, that.

18 THE CHAIRMAN: So we will know where we stand,
19 let's take up each one.

20 First, Section 30, you recommend there be no
21 counterpart in the Constitution.

1 DR. BARD: That is right.

2 THE CHAIRMAN: Any comment about that?

3 DR. BARD: It is a procedural aspect. The
4 provisions of this Section have been elaborated upon in
5 Section 52.

6 THE CHAIRMAN: This deals with Section 32 now.

7 DR. BARD: 32, but it also gets into Section
8 52, and we feel that the Committee on State Finance and
9 Taxation --

10 MR. BROOKS: This has already been brought to
11 the attention of the Finance Committee, and they have
12 agreed to incorporate it in their recommendation.

13 THE CHAIRMAN: Any question or comment? Sec-
14 tion 34.

15 DR. BARD: Falls under the jurisdiction of the
16 Committee on Finance and Taxation.

17 MR. BROOKS: It will be reported on at this
18 meeting.

19 THE CHAIRMAN: Any further comment. Section
20 35.

21 DR. BARD: This did take much more of our time

1 than the others. The Committee recommends the deletion
2 of this Section. The prohibitions in this Section are
3 appropriately handled by statute. The Committee sees no
4 reason why the compensation of a public official should
5 not be increased in his office, provided he has not been
6 in a position to withhold. This has come up where some
7 of the officeholders in Baltimore City, you will see
8 that Baltimore City is dragged into this, the Committee does
9 suggest that the Committee on the Executive Department
10 might want to consider provisions to consider decreases
11 in the salary of public officers during their term of
12 office.

13 THE CHAIRMAN: Any comment or question?

14 DR. BARD: My final comment would be, we feel
15 this completes with the assignments you have given, our
16 responsibility except for the very heavy one in connection
17 with unicameral and bicameral which will come up at the
18 next meeting.

19 THE CHAIRMAN: Thank you, Dr. Bard.

20 Mr. Sayre?

21 MR. SAYRE: It seems to me appropriate to have

1 a Section in this Article that denies the power of the
2 Legislature to enact local legislation except as pro-
3 vided under the Article.

4 THE CHAIRMAN: I think we better defer that
5 until we consider the Report of the Committee on Local
6 Legislation if we can.

7 MR. SAYRE: It was just sort of hanging. We
8 can't do anything about it. But it would be an additional
9 sector.

10 THE CHAIRMAN: I would like to start now with
11 the consideration of the Report of the Committee on the
12 Executive Department. If you can make your general
13 comments, Judge Adkins, we can be thinking about it dur-
14 ing dinner.

15 JUDGE ADKINS: There are two very relatively
16 simply problems dealt with in this Report. The first is
17 a succession to the office of governor, in the event the
18 office should become vacant, and the second question is the
19 government's veto power. Generally speaking, the succes-
20 sion to office provided is from the governor to the
21 lieutenant governor. In the absence of both of those

1 gentlemen, to the President of the Senate. We make no
2 further provision beyond that since the President of the
3 Senate being an ex officio officer will always be present
4 to take over. I don't think any particular introductory
5 comment is necessary, Mr. Chairman.

6 THE CHAIRMAN: Go right ahead to the first
7 Section.

8 JUDGE ADKINS: Want me to read it?

9 THE CHAIRMAN: Yes.

10 JUDGE ADKINS: Section (a) reads: If the
11 governor-elect dies, resigns, or is disqualified follow-
12 ing his election, but prior to taking office, the
13 lieutenant governor elected with him shall succeed to the
14 office of governor for the full term. If the governor-
15 elect fails to assume office for any other reason, the
16 lieutenant governor elected with him shall serve as acting
17 governor. If the governor-elect does not assume office
18 within six months of the beginning of the term, the office
19 of governor shall be vacant.

20 THE CHAIRMAN: Any question on Section (a)?

21 DR. BURDETTE: I do not know what it means, the

1 last words, the office of the governor can be vacant.

2 JUDGE ADKINS: There is a later provision that
3 provides for the filling of a vacancy. There are two
4 concepts, one for the acting governor and one for the
5 acting governor to succeed when the vacancy may occur prior
6 to the time the governor is actually sworn into office.

7 THE CHAIRMAN: Anything further, comment or
8 question? If not, we move on to Section (b) on Page 2.

9 JUDGE ADKINS: That Section deals with the
10 amount of disability.

11 If the governor notifies the lieutenant governor
12 in writing that he will be temporarily unable to carry out
13 the duties of his office or if the governor is disabled
14 and thereby unable to communicate such inability to the
15 lieutenant governor, the lieutenant governor shall serve
16 as acting governor in writing that he is able to carry
17 out the duties of his office. If the governor does not
18 notify the lieutenant governor in writing that he is
19 able to carry out the duties of his office within six
20 months from the time the lieutenant governor begins serv-
21 ing as acting governor, the office of governor shall be

1 vacant.

2 In other words, if there is a disability that
3 occurs, the lieutenant governor becomes acting governor,
4 in the event the disability exists for six months or
5 longer, the office would be declared vacant and the lieu-
6 tenant governor would become governor.

7 THE CHAIRMAN: Any question or comment. Dr.
8 Michener?

9 DR. MICHENER: This may be anticipating, but
10 I think there is a conflict between this provision and a
11 later one. If the governor does notify the lieutenant
12 governor that he is able to carry out his office, the
13 duties of his office, then I take it, it is implicit here,
14 the office of the governor does not become vacant.

15 JUDGE ADKINS: That is correct.

16 DR. MICHENER: But there is nothing here to
17 state if the notification to the governor is factual or
18 not, and in President Wilson's case, the actions carried
19 out in his name were actually in effect or not, and all
20 you have here in an indication signed by another governor.
21 You stop the whole procedure.

1 JUDGE ADKINS: That is a touchy problem, and
2 one we have not had the wisdom to deal with, but the
3 residual power given to the Supreme Court and the Court
4 of Appeals on Section (e), Page 4, would be our answer to
5 that current problem.

6 THE CHAIRMAN: Or wouldn't the General Assembly
7 under your Paragraph 2?

8 JUDGE ADKINS: The General Assembly could have
9 the power to on its motion by the next Section to --

10 DR. MICHENER: This is where I saw a possible
11 conflict because this does not limit. Section 1 does not
12 put such a limitation on it. There are few alternative
13 measures here, methods here which could be in conflict.
14 And there is no provision, which shall be supreme.

15 JUDGE ADKINS: I don't see how they could be
16 in conflict since they are alternatives. It -- maybe I
17 don't understand the import of the question. If you are
18 suggesting that the governor having given his notice of
19 disability, then attempted to withdraw his notice of dis-
20 ability, that would be, if that were then followed by a
21 two-thirds vote of the General Assembly relative to

1 disability, it would seem to me necessarily that the
2 two-thirds vote of the General Assembly would prevail
3 because they are not exclusive remedies. They are alter-
4 nate remedies, and if either occurs, the governor is, in
5 fact, considered to be disabled.

6 THE CHAIRMAN: But the cycle could start again.

7 JUDGE ADKINS: The cycle would start again.

8 THE CHAIRMAN: Does that answer your question
9 now?

10 DR. MICHENER: Then you didn't mean if he
11 doesn't give the notice, the office shall not be vacant,
12 because you don't have to mean that when I asked you the
13 first question.

14 JUDGE ADKINS: You will have to say that again.

15 DR. MICHENER: It still could become vacant
16 through action of Section 2 on this first Section, if the
17 governor does notify the lieutenant governor in writing,
18 if he is unable to carry out the duties of his office, the
19 office of the governor shall not be vacant. I asked you
20 if that is what it meant, and I understood you to say Yes.

21 THE CHAIRMAN: It would not be unless the

1 Legislature acted and in that event, it would be.

2 DR. MICHENER: There is a proviso in there.

3 THE CHAIRMAN: Any further question? Section 2.

4 JUDGE ADKINS: The General Assembly may by a
5 two-thirds vote of all members in joint session pass a
6 declaration stating that the governor is unable to carry
7 out the duties of his office by reason of a disability,
8 including, but not limited to, physical or mental dis-
9 ability. If the General Assembly passes such a declaration,
10 it shall be delivered to the Court of Appeals, that will,
11 of course, become the Supreme Court, which shall have
12 original, exclusive and final jurisdiction to determine
13 whether the governor is unable to discharge the duties of
14 his office by reason of such disability. If the Court of
15 Appeals determines that the governor is unable to discharge
16 the duties of his office by reason of a disability, the
17 office shall be vacant.

18 THE CHAIRMAN: Any question?

19 Mr. Martineau?

20 MR. MARTINEAU: Yes, I wonder if there shouldn't
21 be some provision in here for someone being able to call

1 the General Assembly into session to consider this, if you
2 would have the notification from the governor or from the,
3 whoever is signing his name, come at the end of the legis-
4 lative session, then nothing could be done over a period
5 of approximately nine months, and there would be no one
6 able to call the General Assembly into session. Did the
7 Committee consider that?

8 JUDGE ADKINS: No, frankly, I don't think we
9 did.

10 THE CHAIRMAN: Had you finished your comment,
11 Judge Adkins?

12 JUDGE ADKINS: We did not consider it.

13 MR. MILLER: That is another reason for having
14 the Legislature a continuing body.

15 MR. MARTINEAU: If there is a question on the
16 lieutenant governor, he would be able to call the Legislature
17 into session to have a decision on this.

18 JUDGE ADKINS: My offhand opinion would be
19 that that would be a pretty dangerous weapon to give to
20 the lieutenant governor, and I would think perhaps that
21 the continuing disability for the period of nine months

1 might be less damaging than having the potential con-
2 flict of the lieutenant governor calling the Legislature
3 into special session, but this is not a Committee opinion,
4 because we didn't consider it.

5 THE CHAIRMAN: Would you consider the suggestion
6 so that you can report on it?

7 MR. MARTINEAU: Not necessarily the lieutenant
8 governor, but someone be authorized if a question arises
9 as to the governor's ability to carry out the duties of
10 his office, some procedure for getting the General Assembly
11 in session.

12 JUDGE ADKINS: We will make a note of that.

13 DR. BURDETTE: This matter is taken care of by
14 Item 1 by which the lieutenant governor on his own motion
15 may decide, this is Page 2, that he must act as governor,
16 and if he is acting as governor, he can call the General
17 Assembly; and it seems to me that an honorable man very
18 likely would in order to rectify his judgment that the
19 governor is incapacitated.

20 JUDGE ADKINS: I don't think that analysis would
21 work because the one case in which the lieutenant governor

1 could assume the office of governor without a written
2 statement of the governor would be whereby the governor
3 was in a coma. If the lieutenant governor attempted to
4 assume the office when the governor was still on his feet,
5 the governor could just give him the written notice
6 indicating he was still serving as governor, and the
7 lieutenant governor would have no power to call the Legis-
8 lature into session.

9 DR. BURDETTE: I don't think that would be
10 very bad.

11 DR. JENKINS: I seem to recall that we are
12 going to have a provision whereby the General Assembly
13 may convene itself without the call of the governor.

14 THE CHAIRMAN: I thought we had done that, but
15 I just checked with Mr. Brooks , and he told us we voted
16 it down.

17 We will have to stop now because we must main-
18 tain a schedule. Dinner will be probably at 6.

19 (Whereupon the Commission adjourned, to re-
20 convene following dinner.)
21

CONSTITUTIONAL CONVENTION COMMISSION

EVENING SESSION

Sunday, September 18, 1966, 7 o'clock

Appearances as heretofore noted.

Reported by:
W. P. Banister

1 THE CHAIRMAN: Shall we go ahead? We are
2 on paragraph (c) on page 3. We are resuming consideration
3 of the Fifth Report of the Committee on the Executive
4 Department.

5 JUDGE ADKINS: (c) Vacancy in Office. If
6 for any reason a vacancy occurs in the office of governor,
7 the lieutenant governor shall succeed to the office of
8 governor for the unexpired term.

9 The term vacant or vacancy has been used in
10 earlier sections and I think needs no further explanation
11 on my part.

12 THE CHAIRMAN: Are there any comments or ques-
13 tions as to this subdivision?

14 DR. MICHENER: We haven't provided for the
15 constitutional post of president of the Senate. The Com-
16 mittee on Style may want to change the wording slightly.

17 JUDGE ADKINS: It may be that we will want to
18 use the presiding officer of the Senate rather than
19 presidency of the Senate. That may be a problem for the
20 Committee on Style.

21 THE CHAIRMAN: Go ahead.

1 JUDGE ADKINS: Governor and Lieutenant Gover-
2 nor. If for any reason a vacancy occurs in the office
3 of both governor and lieutenant governor, the president
4 of the Senate shall succeed to the office of governor
5 for the unexpired term. If for any reason the office
6 of lieutenant governor is vacant when the lieutenant
7 governor is to serve as acting governor, the president
8 of the Senate shall serve as acting governor.

9 That is self-explanatory.

10 THE CHAIRMAN: Is there any question or comment?

11 MR. CASE: This probably stems from the fact
12 that I have not read the full report, but how long does
13 he act as acting governor?

14 JUDGE ADKINS: Six months. After six months,
15 the office is declared vacant, and the lieutenant governor
16 would then become governor. That is provided for in an
17 earlier paragraph.

18 MR. CASE: There isn't any lieutenant governor,
19 is there?

20 JUDGE ADKINS: Maybe I don't understand the
21 import of your question.

1 MR. CASE: If for any reason a vacancy occurs
2 in the office of both the governor and lieutenant gover-
3 nor, the president of the Senate serves for the unexpired
4 term. This means that there will be no --

5 JUDGE ADKINS: There will be no lieutenant
6 governor in that event. There will be none.

7 MR. CASE: So the president of the Senate can
8 become a governor?

9 JUDGE ADKINS: That is right. The office of
10 lieutenant governor is not filled. We simply await the
11 next general election to fill the office of both gover-
12 nor and lieutenant governor.

13 MR. CLAGETT: I have a question there. If he
14 is other than a figurehead and has duties and responsi-
15 bilities, who will take care of those duties and responsi-
16 bilities?

17 JUDGE ADKINS: If the lieutenant governor is
18 other than a figurehead?

19 MR. CLAGETT: Yes.

20 JUDGE ADKINS: Those responsibilities would not
21 be covered under this proposal until such time as a new

1 lieutenant governor was elected. Our thinking was in the
2 event of this rather remote set of contingencies, the
3 State could live without a lieutenant governor for the
4 period of time necessary to await the next election with-
5 out going through the mechanics of filling the vacancy.

6 DR. MICHENER: The same thing is true with the
7 lieutenant governor?

8 JUDGE ADKINS: Yes.

9 DR. MICHENER: I would note in regard to taking
10 care of this vacancy in terms of the vice-president of
11 the United States -- because that occurred so many times --
12 the vice-president is assuming more power. There has
13 been no law of succession there, but have you given that
14 any thought?

15 JUDGE ADKINS: There are no constitutional
16 duties given to the lieutenant governor under this pro-
17 posal. He shall have such duties as the, well, really
18 as the chief executive shall assign to him. That being
19 the case, if the president of the Senate became governor,
20 he could simply reassign those duties among his existing
21 personnel without having any particular hiatus in authority.

1 I think your problem would be more acute if
2 we had assigned certain constitutional responsibilities
3 to the lieutenant governor which, however, we have not
4 done. He is basically a ceremonial officer, I suppose,
5 having such responsibilities as the governor shall assign.
6 We have not thought it necessary to provide continuous
7 succession for lieutenant governorships as well as gover-
8 norships.

9 THE CHAIRMAN: Any further questions or comment?
10 Subsection (d).

11 JUDGE ADKINS: (d) Status of Successor. If
12 the lieutenant governor or the president of the Senate
13 succeeds to the office of governor, he shall have the
14 title, powers, duties and emoluments of the office, and
15 if the lieutenant governor or the president of the Senate
16 serves as acting governor, he shall have the powers and
17 duties of the office. If the president of the Senate
18 serves as acting governor, he shall continue to be the
19 president of the Senate.

20 The significance here is the fact that if the
21 lieutenant governor or president serves as acting governor,

1 he does not assume the emoluments of the office.

2 MRS. FREEDLANDER: I would like to speak to
3 that. Judge Adkins, if the legislature is in session
4 and the presiding officer is serving both as the governor
5 as well as presiding officer of the Senate, there would
6 be quite a bit of difficulty, it seems to me, particular-
7 ly if you have a budget going through. There might be
8 a conflict of interest, so to speak. It would be import-
9 ant for the presiding officer of the Senate to be on
10 the job full-time, as it would be for the governor.

11 JUDGE ADKINS: We wrestled with that problem.
12 In our thinking I was for a six-month period. It was not
13 fair to ask the president of the Senate to disqualify him-
14 self or disqualify himself by this Constitution from
15 being president of the Senate, because you would be in
16 the position of having a president of the Senate for six
17 months governor and at the end of six months, if the
18 governor resumed his office, the president of the Senate
19 would be out. We felt it essential to leave him in as
20 president of the Senate with the tacit understanding that
21 the job of president of the Senate would then devolve on

1 the president pro tem. We saw no way to resolve this.
2 We didn't think it fair to have the president of the
3 Senate disqualified from being president, if he became
4 acting governor.

5 So that was our solution. Whether there is a
6 better solution, if there is, we are open to suggestion.
7 This can only exist for a period of six months.

8 MRS. FREEDLANDER: The six months could be the
9 critical six months. It could be January through March.

10 JUDGE ADKINS: That is right, it could be the
11 critical six months, but in that event the president of
12 the senate would be serving in a dual position, and pre-
13 sumably his duties as president of the Senate would then
14 devolve upon the president pro tem.

15 DR. JENKINS: It seems to me this ought to be
16 left to the Senate, which elects the president of the
17 Senate. I would prefer to see this read that the presi-
18 dent of the Senate serve as acting governor, that when he
19 serves as acting governor, he shall not be disqualified
20 from serving as president of the Senate, leaving to the
21 Senate this decision as to whether he should continue.

1 JUDGE ADKINS: Let's hear from the reporter
2 first.

3 MR. POWER: One problem we are faced with here
4 that hasn't been broached is this, assume the president
5 of the Senate takes the job of acting governor. If,
6 after six months, the governor has not again become
7 capacitated, the presiding officer of the Senate becomes
8 governor. What could happen then is if the presiding
9 officer of the Senate does not continue to be the presiding
10 officer of the Senate, he would be taken out of the line
11 of succession. This is the internal drafting problem.
12 I don't know if I am expressing myself.

13 One purpose for the clause is to make clear
14 when a presiding officer of the Senate has become acting
15 governor six months, he then becomes governor.

16 MR. MARTINEAU: Can't you handle it the same as
17 you do anything else? You don't provide for someone to
18 take over the office of the president of the Senate.
19 You merely provide that the Senate shall elect somebody
20 during the interim to carry out the duties.

21 JUDGE ADKINS: If I understand the import of



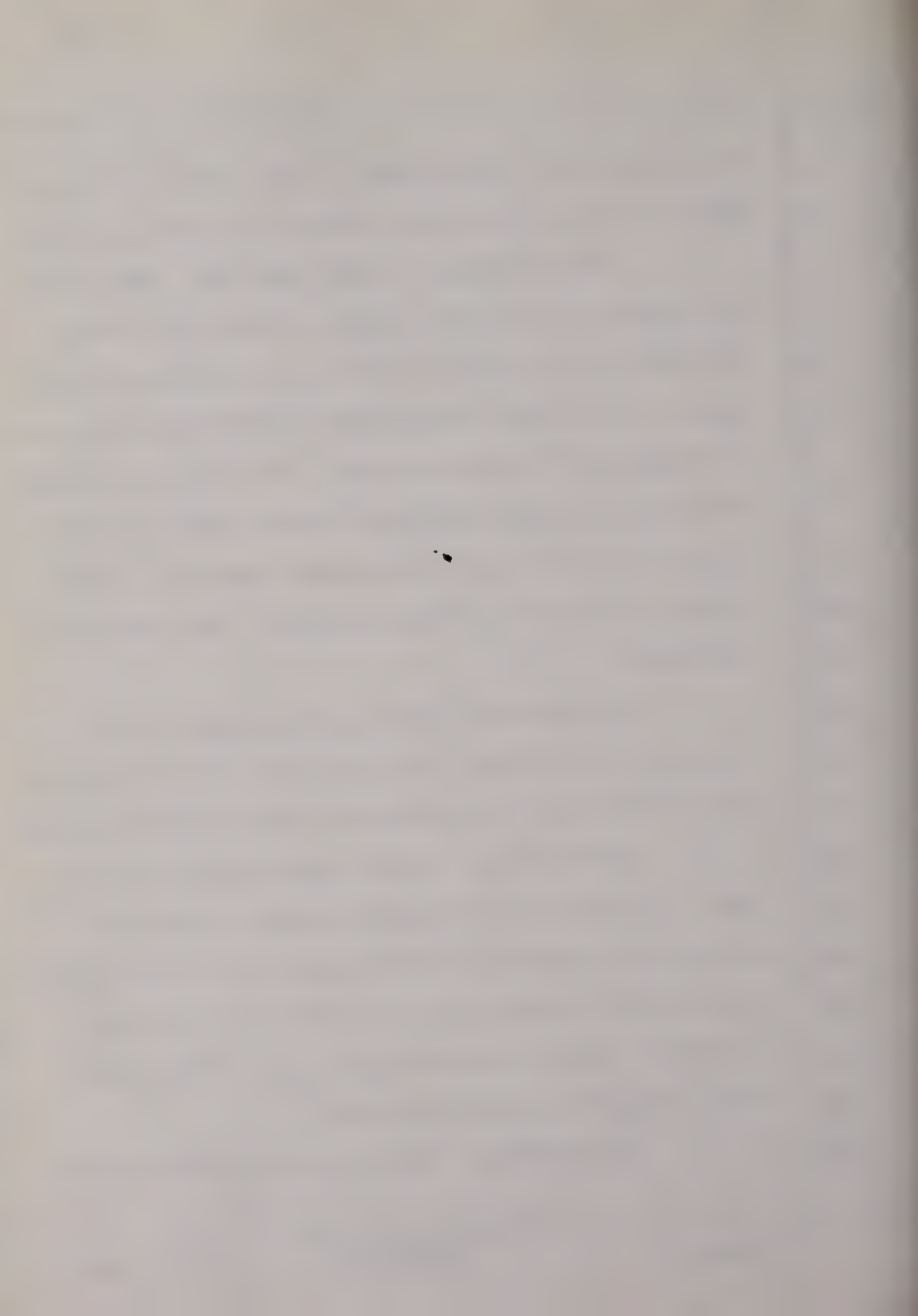
1 this discussion, the problem is if he ceases to be presi-
2 dent of the Senate, he then ceases to be acting governor.

3 MR. MARTINEAU: I don't mean that. When I say
4 you have the Senate elect someone to serve as acting
5 president of the Senate, he is not the president of the
6 Senate any more than the president of the Senate is gover-
7 nor because he is acting governor. You draw the distinct-
8 ion between acting governor and one who holds the office
9 of governor, the same for lieutenant governor. I don't
10 see why you don't do the same thing for the president of
11 the Senate.

12 THE CHAIRMAN: As though you added to that
13 sentence a phrase saying, but the duties of the president
14 of the Senate shall be performed by the president pro tem.

15 JUDGE ADKINS: I would have no objections to
16 that. It seems that is inherent because I think the
17 duties of the president of the Senate would devolve upon
18 the president pro tem; but if you feel it is necessary
19 to spell it out in the Constitution, I at least would
20 have no objection to that amendment.

21 DR. BURDETTE: I think it is desirable because



1 the reader of the Constitution will bring up, as I did
2 in my own department, the same point Mrs. Freedlander
3 brought up. It implies that we are breaking down the
4 principle of separation of powers. It could be argued
5 that the Constitution expressly provides he shall be
6 president of the Senate and that, unless he himself were
7 incapacitated, could not be removed from that function
8 even by the Senate. He certainly could stick with that
9 from this language. I very much endorse that.

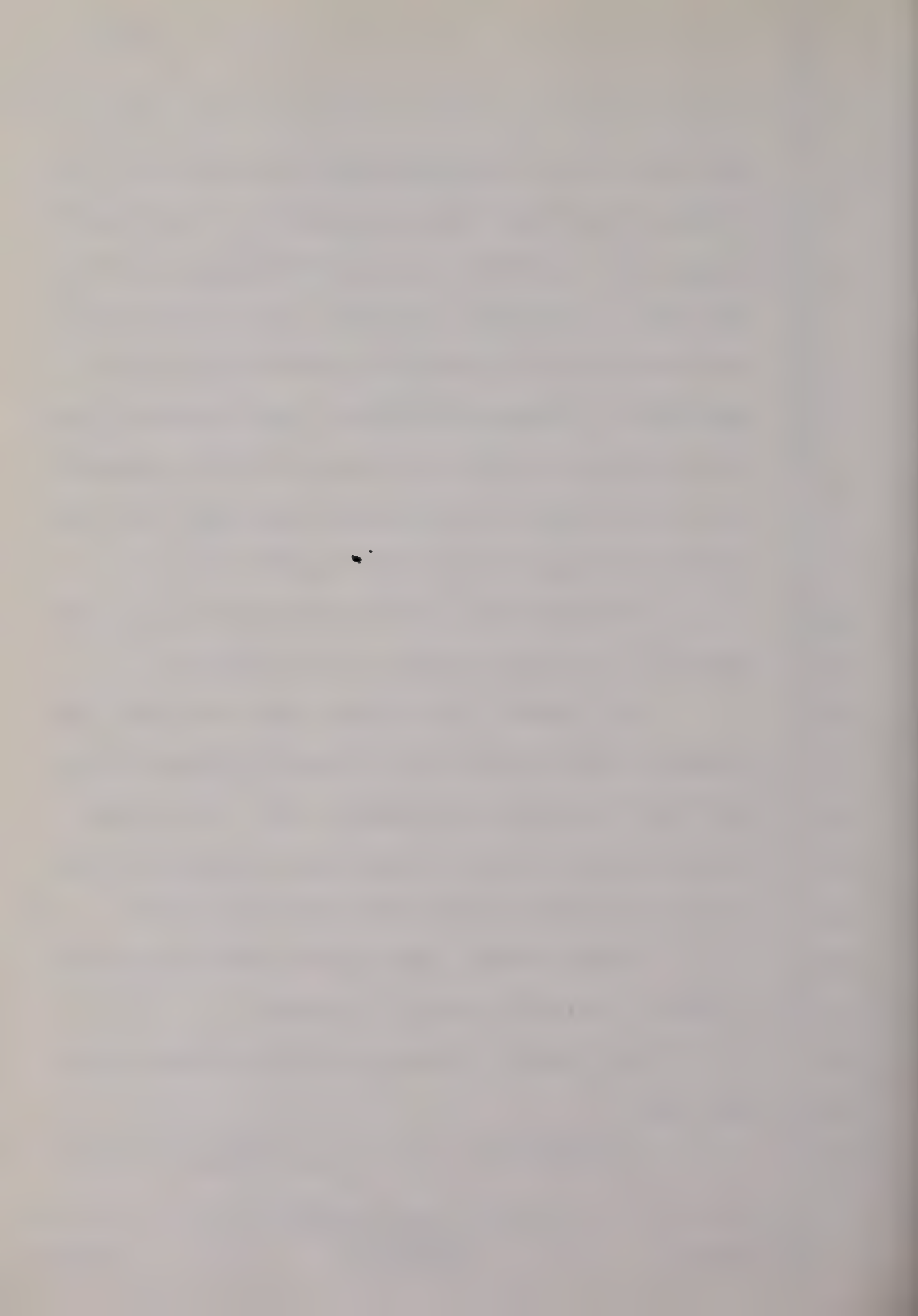
10 THE CHAIRMAN: Is there any objection to the
11 addition of some such phrase as was suggested?

12 MR. SAYRE: We discussed this very point, and
13 I think it would be desirable to clarify because it is
14 not clear unless you go through it all. If we said,
15 But the duties of the president shall devolve upon the
16 Senate, shall devolve upon the president pro tem --

17 JUDGE ADKINS: That is the phrase we are talk-
18 ing about, trying to phrase it exactly.

19 MR. SAYRE: I think it would be desirable to
20 have that.

21 THE CHAIRMAN: Is there any objection to the



1 addition of such a phrase?

2 MR. MARTINEAU: I have the objection of naming
3 the officer. I think it would be better to devolve upon
4 a person elected by the Senate or something, rather than
5 naming an officer, and you would by the Constitution
6 create another office which I would object to.

7 JUDGE ADKINS: You would not use the words
8 president pro tem?

9 MR. MARTINEAU: That is right.

10 JUDGE ADKINS: All right, leave it up to the
11 drafting.

12 THE CHAIRMAN: Leave it to the committee with
13 the idea that you would add a phrase indicating the duties
14 of the president of the Senate would devolve upon the per-
15 son upon whom those duties would devolve by election of
16 the Senate or whatever.

17 MR. CLAGETT: That would be a very good thing
18 because it would also avoid a period where the Senate
19 may be preoccupied in the event of the loss of the presi-
20 dent of the Senate while acting as governor. There could
21 be a period where they would have to elect a president

1 of the Senate in order to succeed to the vacancy by the
2 death or disability or some other reason of the then
3 acting governor who would be the president of the Senate.
4 So it would already have been accomplished.

5 THE CHAIRMAN: In the absence of objection,
6 a change will be made by the committee. Are there any
7 further comments as to subsection (d)? If not, we go
8 to (e).

9 JUDGE ADKINS: (e) Jurisdiction over Questions
10 of Vacancy and Succession. The Court of Appeals shall
11 have original, exclusive and final jurisdiction to
12 determine the existence of a vacancy in the offices of
13 governor and lieutenant governor and all questions con-
14 cerning succession to these offices or to the powers
15 and duties thereof.

16 I think the reason for that is reasonably clear
17 without further comment.

18 MR. HAILE: The last three lines -- and all
19 questions concerning succession to these offices or to
20 the powers and duties thereof -- that bothers me every time
21 I read it. It seems to me that is not germane to the

1 tenor of this section in that the last seven words should
2 be omitted -- or to the powers and duties thereof --
3 should be omitted or deleted. Therefore, I move that
4 they be deleted.

5 JUDGE ADKINS: I would make one comment. I
6 think perhaps the language might be clarified, but the
7 intent is to give the Court of Appeals power to decide
8 if any question should arise between the divergence of
9 responsibilities or duties between the acting governor and
10 the governor, the Court of Appeals would have the right
11 to decide those questions.

12 MR. HAILE: That would be covered by the phrase,
13 all questions concerning succession to these offices --
14 all questions.

15 THE CHAIRMAN: I am not sure that would follow.

16 JUDGE ADKINS: I wouldn't think it would follow.
17 If he succeeds as governor, there would be no question.
18 If he succeeded as acting governor, there might very well
19 be some questions that would arise during the hiatus
20 period. That was the reason for adding the last clause.

21 THE CHAIRMAN: Couldn't you have some difficulty

1 occur under this section if you had a question arise as
2 to the powers or duties of the governor entirely in-
3 dependent of this disability question, the contention
4 being made that the only Court that would have juris-
5 diction to decide the question would be the Court of Ap-
6 peals?

7 JUDGE ADKINS: I am confident that argument
8 could be made since you just made it, but aside from that,
9 I would think it a rather tortured construction of the
10 language. Since the language refers to original, ex-
11 clusive and final jurisdiction to determine the existence
12 of a vacancy in the offices of governor and lieutenant
13 governor, I should think that would qualify, but if there
14 is any question about it, we probably should clarify.

15 THE CHAIRMAN: It seems it could be easily
16 clarified by tying down the question of powers and duties
17 to the things you are talking about here.

18 JUDGE ADKINS: We would be glad to do that.

19 DR. WINSLOW: I suggest, sir, that I think in-
20 sertion of one word might do it -- or to the powers and
21 duties involved therein -- which is the case of involving

1 succession, which is what you mean, isn't it?

2 DR. BURDETTE: No, it would be involving the
3 office.

4 THE CHAIRMAN: Resulting from the problem of
5 succession.

6 JUDGE ADKINS: We could say from the powers
7 and duties involved in succession thereof.

8 THE CHAIRMAN: Wouldn't it be better to con-
9 sider it?

10 JUDGE ADKINS: Yes.

11 THE CHAIRMAN: Mr. Haile made a motion. Did
12 anybody second it? That was to delete completely the
13 last seven words. Is there a second?

14 MR. CASE: Do you mean to delete it completely
15 or clarify it the way it has been discussed here?

16 MR. HAILE: If it is clarified, that will remove
17 my objection. It seems to me that even if the lieutenant
18 governor serves as governor, he ought to have the juris-
19 diction to determine his own powers and separation of
20 powers. The phrase as it exists now is too broad to say
21 the Supreme Court has the final say on what power the

1 governor has. Original jurisdiction and final juris-
2 diction to determine all questions relating to powers of
3 the governor and duties thereof.

4 MR. CASE: Don't powers and duties flow from
5 the office itself? Once the office is established, the
6 powers and duties necessarily follow.

7 MR. HAILE: I don't see the reason for this
8 phrase.

9 MR. CASE: I second the motion.

10 THE CHAIRMAN: The motion is to delete the last
11 seven words -- or to the powers and duties thereof. Any
12 discussion?

13 MR. POWER: I think some words are necessary be-
14 cause in drafting the article, I, for one, did not assume
15 that acting governor was an office at all but, rather,
16 this was just a transfer of duties and powers on a temporary
17 basis to somebody holding another office. I think the
18 language is necessary in order to accomplish this, although
19 perhaps too broad in its present form.

20 MR. CASE: If you are dealing with a vacancy,
21 as I understand this, you don't have an acting governor,

1 you only have an acting governor when there is no vacancy,
2 but the office still being filled, the incumbent is unable
3 to act. Is that correct?

4 JUDGE ADKINS: The point is well taken.

5 MR. POWER: Yes.

6 JUDGE ADKINS: This article specifically limits
7 it to existence of a vacancy, powers and duties, alloca-
8 tion of powers and duties in the event of a vacancy and
9 who succeeds to the vacancy.

10 MR. CASE: Once you fill the vacancy, the powers
11 and duties seem to me to follow.

12 JUDGE ADKINS: I think this is true.

13 THE CHAIRMAN: Is it intended that the section
14 be limited to that?

15 JUDGE ADKINS: Yes, to be limited to that.

16 MR. POWER: I am not sure. Perhaps the caption
17 is what really is wrong because I think it was my decision
18 in drafting initially that if a question came up concern-
19 ing whether or not the lieutenant governor had the powers
20 to act as governor under one of the provisions of this
21 section or whether or not the governor had the power to

1 act as governor, this was exactly the type of question
2 you wanted the Supreme Court to decide in the exercise
3 of its original jurisdiction. Perhaps the caption is what
4 is really in error.

5 MR. CASE: Not the caption. It is the body of
6 the text that says, determine existence of a vacancy.

7 THE CHAIRMAN: I think his point is that he is
8 thinking the first part of the sentence dealing with
9 vacancy, the second part dealing with succession relates
10 to vacancy, but there is a third part, the powers and
11 duties thereof, not limited either to vacancy or success-
12 ion.

13 MR. CASE: It could be taken out of here and put
14 someplace else. It doesn't belong here.

15 MR. HAILE: In that connection, it already does
16 appear in paragraph (d), the preceding page -- if the
17 lieutenant governor or the president of the Senate suc-
18 ceeds to the office of governor, he shall have the powers,
19 duties, and emoluments of the office.

20 THE CHAIRMAN: I understood Professor Power was
21 talking about the question of who was to decide this.

1 His point, if I follow him, was that the question of the
2 right to act as acting governor might have to be decided
3 by the Court of Appeals.

4 MR. HAILE: I agree. That would be a question
5 concerning succession.

6 THE CHAIRMAN: He makes a point that it isn't.
7 Succession would be succeeding to the office and not
8 succeeding to the powers.

9 MR. MINDEL: Mr. Chairman, I am a member of
10 this committee, but in looking at this, it strikes me that
11 perhaps we could stop where we say the Supreme Court
12 shall have the jurisdiction concerning the determination
13 of the existence of a vacancy in office of governor and
14 lieutenant governor. I think we ought to spell out in
15 the Constitution the method of succession.

16 The Constitution ought to say who shall succeed.
17 I can see where there might be a question whether there
18 is a vacancy. It seems to me when it comes to succession,
19 the Constitution should say lieutenant governor, president
20 of the Senate, or whoever. Why do we give the Court the
21 power to determine who shall succeed to the governorship?

1 MR. POWER: Mr. Mindel, I thought we had spelled
2 out the order of succession to the office of governor
3 in exactly the terms you indicated. The last section
4 is intended only to create an unusual type jurisdiction
5 in the Supreme Court to make the determination, so that
6 you would start in the Supreme Court. I don't see how
7 the two are inconsistent.

8 THE CHAIRMAN: As I understand Professor Power--
9 if I am incorrect about this, please correct me -- what
10 you say you were trying to do in this section is to con-
11 fer on the Supreme Court jurisdiction to determine the
12 fact as to whether a vacancy existed, as to whether the
13 governor was or was not disabled and, hence, whether some-
14 body else was authorized to act as governor.

15 MR. POWER: That is right.

16 THE CHAIRMAN: In the event of temporary dis-
17 ability.

18 MR. CASE: That is not what it says.

19 THE CHAIRMAN: I understand. I wanted his pur-
20 pose first. Is that correct?

21 MR. POWER: That is correct.

1 THE CHAIRMAN: Is that the purpose of the com-
2 mittee?

3 JUDGE ADKINS: That is my understanding, yes.

4 MR. SYKES: I suggest as to this language that
5 if that is what the committee did mean, I would move that
6 the language be amended to read: To determine the exist-
7 ence of a vacancy in the offices of governor and lieutenant
8 governor and all questions arising under this section
9 concerning the right to office or the exercise of the
10 powers thereof.

11 THE CHAIRMAN: Rather than pass on that precise
12 language, would you amend your motion to suggest it to
13 the committee?

14 MR. SYKES: Yes.

15 MR. BOND: Second.

16 THE CHAIRMAN: Is there any discussion?

17 MRS. FREEDLANDER: Mr. Chairman, there is a
18 motion on the floor, Mr. Haile's motion.

19 MR. HAILE: I yield to that. I think it is an
20 improvement.

21 DR. BURDETTE: Is the word exclusive in this?

1 THE CHAIRMAN: He hasn't touched that. That
2 is a separate question. Let's hold it a moment. The
3 motion is for the committee to reconsider this section
4 with certain language which Mr. Sykes has just read.
5 Would you read it again, Mr. Sykes?

6 MR. SYKES: The Court of Appeals shall have
7 original, exclusive and final jurisdiction to determine
8 the existence of a vacancy in the offices of governor
9 and lieutenant governor and all questions arising under
10 this section concerning the right to office or the exer-
11 cise of the powers thereof.

12 DR. BURDETTE: Mr. Chairman, this is exactly
13 the question I am going to raise. Maybe a lawyer has a
14 different interpretation of the word exclusive, but it
15 seems to me the word exclusive runs in conflict with (b)
16 (i) which describes how a vacancy shall occur. If it is
17 exclusively in the Court of Appeals to determine how a
18 vacancy occurs, the Constitution has nothing to say about
19 it.

20 THE CHAIRMAN: I think your point is well taken.
21 I think also the similar but not the same comment should

1 be made as to the use of the word final. I wonder why
2 we need anything except original jurisdiction.

3 MR. MARTINEAU: I was going to make the same
4 point. You can have original or exclusive, but you don't
5 need all three.

6 THE CHAIRMAN: Would you want to comment?

7 JUDGE ADKINS: I don't really see the problem
8 here, except for the fact that exclusive and final may
9 be redundant. Obviously, if the Court of Appeals or the
10 Supreme Court of Maryland has original jurisdiction, it
11 also has final jurisdiction.

12 MR. MARTINEAU: It has final jurisdiction under
13 any circumstance.

14 JUDGE ADKINS: There is no appeal beyond that,
15 and to that extent I think the language might be redundant.
16 I think the word exclusive perhaps also falls in the same
17 category.

18 THE CHAIRMAN: Would you delete it?

19 JUDGE ADKINS: I would suggest that this section
20 be referred back to us, in view of these comments, for us
21 to restudy it.

1 THE CHAIRMAN: Did you withdraw your motion,
2 Mr. Haile?

3 MR. HAILE: Yes, sir.

4 THE CHAIRMAN: The suggestion of the chairman
5 of the committee is that the section be referred back to
6 him with these comments. Would you withdraw your motion
7 on that basis, Mr. Sykes?

8 MR. SYKES: Yes, sir. That was my motion any-
9 way.

10 MR. MILLER: One comment, Mr. Chairman. It
11 seems to me that when they revise the language, it should
12 be so worded that if the governor dies in office, since
13 no action of the Supreme Court is necessary to have the
14 lieutenant governor become the governor, it sounds as
15 though some step was required in any case by the Supreme
16 Court, which I don't think is intended.

17 JUDGE ADKINS: I would think that is clear from
18 the reading of the whole section in its entirety, con-
19 gressman. It is pretty flatly stated in the earlier
20 sections of the statute if the vacancy does occur, if it
21 is a clear-cut vacancy, the lieutenant governor succeeds.

1 It is only in the event of a cloudy situation where some
2 question arises as to whether a vacancy has occurred
3 that this section would become operative.

4 MR. MILLER: I agree, but I don't think that is
5 what it says. You wouldn't have to go through a for-
6 mality of having the Court determine that there was a
7 vacancy, that he was dead.

8 THE CHAIRMAN: Judge Adkins, a somewhat similar
9 question came up in connection with the report of the
10 Legislative Committee. I think the Commission decided
11 at the last meeting it should expressly refer to action
12 of the Supreme Court on petition to be filed. In recon-
13 sidering this, you might consider some such mechanic
14 which would meet Congressman Miller's point.

15 MR. MARTINEAU: It seems to me that this whole
16 section could be covered by language to the effect that
17 the Supreme Court shall have exclusive jurisdiction to
18 determine all cases arising under this section.

19 THE CHAIRMAN: The committee can consider it.
20 Are there any other suggestions for the committee to con-
21 sider in connection with this section? Any other comment
or debate on that section? If not, we go to the question

1 of veto power.

2 DR. MICHENER: I didn't realize you weren't
3 going to have further questions on Section (b). May I
4 raise a question on that?

5 THE CHAIRMAN: Yes.

6 DR. MICHENER: As I understand it under
7 Section 1, the governor can notify the lieutenant gover-
8 nor voluntarily that he is unable to carry out the duties
9 of his office, and thereupon there starts running a six-
10 month period.

11 Under Section 2, two days later the general
12 assembly on its own motion could declare the governor
13 disabled, in which case the lieutenant governor would be
14 eligible to take over immediately. This is the conflict
15 I referred to at the start. The one presupposes a six-
16 month period, the second one does not.

17 Another question I would like to raise is, if
18 a six-month period is desirable, if the governor himself
19 says he is incompetent, why is there not a comparable
20 six-month period when the Assembly declares him incom-
21 petent?

1 I make the observation that just recently in
2 Louisiana the governor was committed, with the connivance
3 of his wife and the head of a mental institution, to
4 an institution, and it was shortly thereafter found that
5 he was competent, but under this there is no redress, he
6 would have been out.

7 THE CHAIRMAN: Let's take up the first one first.
8 Do you have it in mind, Judge Adkins, or do you want it
9 restated?

10 JUDGE ADKINS: As I understand the doctor's com-
11 ment, it is to the effect that there is a potential con-
12 flict in the two sections. The philosophy back of
13 Section 1 is to permit the governor, in the event of a
14 physical disability or a time when he knows he is in-
15 capacitated, to authorize the lieutenant governor to carry
16 on his duties.

17 This is likely to be of temporary duration, in
18 our thinking at least. We put the six-month limitation on
19 it. I would assume that if you could convince the General
20 Assembly that the man was wholly incapacitated, they could
21 pass the two-thirds vote required and thereby the office



1 would be vacant despite the operation of Section 1.

2 But I don't really see any conflict here.

3 You might have two actions at the same time,
4 but I think there would be little question but what, under
5 the language of these articles, the operation of Section
6 2 would prevail. I don't know if it answers the question,
7 but I don't see any way of resolving the conflict he poses
8 if you get the situation he suggests.

9 THE CHAIRMAN: Is there any further comment,
10 Dr. Michener, on that point?

11 MR. DELLA: I think there is one point that
12 needs some study by the committee. If the governor would
13 be incapacitated for a period longer than six months,
14 let's just take a hypothetical and fictional theory for
15 a moment. Suppose the governor and his wife go on a
16 vacation somewhere, their plane comes down, they get lost
17 for six months or a little over six months. Yet there
18 is nothing, absolutely nothing, wrong with him. But by
19 the time he gets back all this has taken place, and he
20 is no longer governor. Yet he is perfectly okay to take
21 over his job again. I think there should be some way to

1 safeguard a person's position if something like this
2 would actually happen.

3 JUDGE ADKINS: I think our answer to that would
4 be, if he is lost for six months, we would have to assume
5 he was out of office and a new man was put in. I don't
6 see how we can provide an open-ended period of disability
7 here. What are you going to make it? If he is gone a
8 year and comes back -- at some point you have to transfer
9 the authority and responsibility of the office to his
10 successor. We elected six months. Maybe this is too short
11 or too long. We would be willing to accept another time,
12 but I don't see how we can leave it open-ended.

13 DR. MICHENER: Maybe some other folks here with
14 more experience could speak to it, but it seems unrealis-
15 tic to ever expect a governor to declare himself volun-
16 tarily incompetent. Under Section 1, if the Legislature
17 would have his own admission that he was incompetent,
18 they could immediately remove him from office. I don't
19 think a governor would subject himself to this. If he
20 didn't admit it, he would have a better chance to re-
21 tain his powers.

1 JUDGE ADKINS: We use the word incapable,
2 not incompetent. A man may know he is going to be hos-
3 pitalized for an extended period of time and want to
4 devolve the duties upon his successor without at the
5 same time declaring himself incompetent. It didn't refer
6 to incompetency in Section 2 either. Both refer to in-
7 capability.

8 If the governor knew that he was to be out
9 for a period of three or four months and wrote the
10 lieutenant governor a letter saying, I will be out of
11 communication four months, will you take over, that is
12 the situation intended to be covered by this section.
13 I don't see how this could be used as admission against
14 interest by the Legislature.

15 MRS.BOTHE: This subsection just states that
16 the General Assembly by a two-thirds vote shall find the
17 governor is unable to carry out the duties of his office.
18 I assume that it is implicit in that it means he is per-
19 manently, or for the balance of his term or for a period
20 of time, so long as to make it necessary to succeed him-
21 self, but it doesn't say so. I query whether it should.

1 JUDGE ADKINS: We had thought the protection
2 of a two-thirds vote was sufficient protection against
3 that probability. Maybe we are optimistic. I can't con-
4 ceive of the General Assembly voting to remove in essence
5 the governor from office unless they were quite sure his
6 disability were going to extend for a considerable period
7 of time, I can't conceive of it being used based on a
8 temporary situation.

9 DR. WINSLOW: May I ask the committee whether
10 they considered the question of a governor being absent
11 from the State or absent from the Country? In a great
12 many States, as you know, the lieutenant governor acts
13 as governor in the physical absence of the governor from
14 the State.

15 JUDGE ADKINS: We did consider that, and we
16 thought the language we used here, that he will be tempo-
17 rarily unable to carry out the duties of his office, was
18 broad enough to cover absence from the State.

19 DR. WINSLOW: But that is only on his own state-
20 ment.

21 JUDGE ADKINS: I assume if he is to be absent

1 from the State, there would be no reason for anybody
2 other than he to designate a successor. If he thought
3 he could fly to Europe and still carry on the duties of
4 his office, that ought to be his decision and not some-
5 body else's.

6 THE CHAIRMAN: Is there further comment as to
7 Section (b)?

8 MR. BOND: I would like to say these problems
9 are very, very intricate and complicated and we did give
10 a lot of thought to it. As you know, the Congress of
11 the United States has been doing the same thing by amend-
12 ment.

13 I would observe I think it would be rather diffi-
14 cult and unfortunate if the Commission bounced the whole
15 thing back to the committee because I think we have done
16 the best we can.

17 JUDGE ADKINS: I say Amen to that.

18 THE CHAIRMAN: Is there any further comment.

19 MR. CASE: It has been a very good job.

20 THE CHAIRMAN: If not, we will move on to the
21 subject of the veto.

1 JUDGE ADKINS: We have rewritten this twice,
2 first with the idea of a terminal session and second with
3 the idea of a continuous session, now we are back to the
4 veto for a seventy-day session.

5 Section 1 provides: Veto by the Governor.

6 (a) Scope. All bills passed by the General Assembly
7 shall be subject to veto by the governor except budget
8 bills and bills proposing amendments to the Constitution.

9 I think these two restrictions are both inherent
10 in the present Constitution.

11 MR. CASE: With one minor exception. Supple-
12 mental appropriation bills, which are also budget bills,
13 are and should be subject to the governor's veto.

14 MR. POWER: Mr. Case, not knowing exactly what
15 your committee was going to do, I drafted this in light
16 of the present article in the Constitution that deals with
17 the executive budget whereby it classifies all bills as
18 either budget bills or supplemental or appropriation bills.

19 These are used in here as terms of art. So
20 when I say budget bill, I intend the budget bill under
21 the present Constitution, which is different from the sup-

1 plemental appropriation bill.

2 MR. CASE: So that it is understood in voting
3 on this that --

4 JUDGE ADKINS: Supplemental appropriations in
5 our concept of this language would still be subject to
6 veto.

7 MRS. FREEDLANDER: Judge Adkins, when you refer
8 to proposing amendments, bills proposing amendments,
9 the governor is not permitted to veto amendments to the
10 United States Constitution. Is that applicable here?

11 THE CHAIRMAN: I didn't catch that.

12 JUDGE ADKINS: A resolution proposing an amend-
13 ment.

14 MRS. FREEDLANDER: Yes, if Maryland adopts a
15 proposed amendment to the United States Constitution,
16 the governor is not permitted to veto that. Is that im-
17 plied?

18 JUDGE ADKINS: I would have to say in all
19 honesty, I don't think that question arose at our com-
20 mittee level. We had in mind amendments to the Constitu-
21 tion of Maryland.

1 MR. BROOKS: With Constitution capitalized
2 as here, it would indicate only the Constitution of Mary-
3 land. The provision wouldn't speak on that question.

4 MRS. FREEDLANDER: Do you think it should, Mr.
5 Brooks?

6 MR. BROOKS: I have no preference.

7 MR. MILLER: I don't gather that in the question
8 of amending the Constitution of the United States that
9 the governor enters into the picture one way or the other.

10 MRS. FREEDLANDER: That is right.

11 MR. MILLER: The Federal Constitution requires
12 the action of the Legislature.

13 THE CHAIRMAN: That is what I was just looking
14 for. I think the language is explicit, isn't it?

15 MR. MILLER: That is right.

16 THE CHAIRMAN: Does that answer your question?

17 MRS. FREEDLANDER: Yes, thank you.

18 THE CHAIRMAN: Any further question as to para-
19 graph (a)? If not, we will move to paragraph (b).

20 JUDGE ADKINS: Action by the Governor. Every
21 bill subject to veto by the governor shall be presented

1 to him within seven days after its final passage by
2 the General Assembly and if the General Assembly is in
3 session, it shall become law if the governor either
4 signs or fails to veto it within ten days of presentation.
5 If the General Assembly adjourns sine die before presenta-
6 tion or during such ten-day period, it shall become law
7 if the governor either signs or fails to veto it within
8 forty-five days of presentation.

9 The significant change here from the present pro-
10 cedure is that we have tied it to final passage rather
11 than presentation to the governor. The present provision
12 provides that he shall act on it within -- is it six days
13 or seven days? I think it is six days of presentation
14 to him.

15 The question of presentation we have found to
16 be governed in large measure by the rules of the Legis-
17 lature. We were not satisfied. We thought the time ought
18 to be fixed to the final passage by the General Assembly.
19 He in essence would have seventeen days from the final
20 passage in which to either sign or veto. If he fails to
21 veto it, it becomes law.

1 THE CHAIRMAN: Are there any questions?

2 MR. GENTRY: I wonder if there is any problem
3 with defining what you mean by presentation.

4 JUDGE ADKINS: We have avoided that by tying
5 it to final passage. The present Constitution uses the
6 word presentation. We use the words final passage. We
7 do use within ten days of presentation.

8 MR. GENTRY: That is what I refer to.

9 MRS. FREEDLANDER: After final passage, if
10 there is some delay with the printer, and so on, or in
11 delivery or something, there would be that seven days
12 that could diminish to five days or four days.

13 JUDGE ADKINS: Maybe I should reply to Mr. Gen-
14 try's question differently from what I did. We have pro-
15 vided that it shall be presented within seven days. This
16 is a different method from that now used, but once it is
17 presented, he has a period of ten days in which to act on
18 it. So he would have a total^{of}/seventendays. The system
19 begins to operate upon final passage.

20 THE CHAIRMAN: A maximum period of seventeen
21 days. It could be less.

1 JUDGE ADKINS: A maximum period of seventeen
2 days. The law now provides he shall act within a certain
3 number of days after presentation, without reference to
4 final passage. We have tried to anchor it to final
5 passage. Within seven days it has to be presented. If
6 it is presented within two days, as I think was Mrs.
7 Freedlander's point, he would then have twelve days from
8 final passage, but he would still have ten days after
9 presentation, but the presentation must be made within
10 the seven-day period following final passage. His period
11 of time for consideration is the same.

12 DR. WINSLOW: The present Constitution says
13 that the governor shall return the bill with his objections.
14 Does the word veto, as the committee is using it, mean
15 exactly the same thing or may he return it without his
16 objections? It seems to me very often the statement of
17 the governor's objections is a very useful thing for the
18 Legislature to have, as well as for people who are con-
19 cerned.

20 JUDGE ADKINS: I would assume that there is no
21 requirement in this language which requires him to state

1 his objections. Maybe that is a worthwhile suggestion.

2 MR. POWER: As I recall, the committee's reason
3 for this was that we felt certainly if the governor
4 wants the legislature not to override the veto, he will
5 inform them either through a message or through informal
6 techniques of what he finds wrong with the bill. We
7 thought perhaps the constitutional language was unneces-
8 sary because this could be accomplished on an informal
9 level without the constitutional provision.

10 DR. WINSLOW: This would not apply to bills he
11 has leftover after the Legislature adjourns because then
12 he is not arguing with the Legislature, he is merely stat-
13 ing his reasons for vetoing this. This is often very
14 useful for the next session of the Legislature which might
15 reconsider the bill.

16 I found that students of government often find
17 these statements of objections to this bill or that bill
18 extremely useful in understanding what is going on. I
19 am looking at it somewhat from the angle of the public
20 and not just from the angle of the Legislature. I think
21 it would be too bad not to have the governor state his

1 objections.

2 MR. CLAGETT: If the governor happens to be
3 on the way back from Europe and runs into a bad storm,
4 sets down in Bermuda, cannot get there on the 17th day,
5 what happens?

6 JUDGE ADKINS: I should suggest he arrange his
7 travel plans a little more expeditiously.

8 THE CHAIRMAN: Or designate the lieutenant
9 governor --

10 JUDGE ADKINS: To act in his absence.

11 DR. MICHENER: The comparable Federal provision
12 contains an unresolved point of constitutional law. You
13 resolved it here. I am curious to know if you meant to
14 do it this way.

15 JUDGE ADKINS: Probably not.

16 DR. MICHENER: You say the governor has so many
17 days to act. If the governor dies during the period of
18 time after presentation, the period runs as of the original
19 presentation from here, and the new governor will have
20 only the remaining time.

21 In the Federal Constitution, it refers to pre-

1 sentation to him, which ties it to the original presenta-
2 tion. Here you say after presentation, which leaves it
3 so the first presentation would cover. I assume this is
4 deliberate. If the governor dies on the eighth day,
5 the lieutenant governor takes over, he has only two days.

6 THE CHAIRMAN: Doesn't this say presented to him
7 in the third line?

8 DR. MICHENER: No.

9 MR. MINDEL: Presented to him.

10 DR. MICHENER: Then he dies. It shall become
11 law if the governor either signs or fails to veto it with-
12 in ten days of presentation, not to him on the second
13 phraseology. The Federal Constitution refers to him again.
14 As I read it, if the governor dies, the new governor has
15 only two or three days, whatever it may be, to act.

16 JUDGE ADKINS: You flatter us when you say this
17 was done by design. I don't think this question was con-
18 sidered.

19 THE CHAIRMAN: Do you want to take it under ad-
20 visement?

21 JUDGE ADKINS: I suppose so.

1 MR. DELLA: Could I ask a question of the com-
2 mittee? What appeared to be the committee's opinion as
3 to why the governor signed the bill so quickly after it
4 was presented to him? Now the procedure is they sign
5 bills about once during the middle or near the end of
6 the session and thirty days after the end of the session.

7 I am wondering about the hurry now, making these
8 many times during the session. Many times the governor
9 may be tied up with functions of State along with legis-
10 lation.

11 JUDGE ADKINS: One of the weaknesses in the pre-
12 sent system is a governor could drag his feet in acting
13 on legislation passed until the Legislature adjourned.
14 We felt the General Assembly was entitled to have a prompt
15 decision by the chief executive during the period of time
16 it was in session, so it could, if it wanted to, exercise
17 the override provisions while it was still in session.

18 We have lengthened the time somewhat after the
19 adjournment to forty-five days, which gives the governor
20 ample time to consider the matter, but our thinking was
21 that during the period of time when the Legislature is in

1 session, if bills were presented to him, he should act
2 forthwith, in order to give the Legislature a chance to
3 consider his action. That was our rationale of that
4 point.

5 THE CHAIRMAN: Any further question on this
6 subsection?

7 MR. SAYRE: With respect to this subsection, in
8 regard to succession, if I could sort of just submit for
9 the idea, so we can have it drafted, if the lieutenant
10 governor or any other successor comes in after the bill has
11 been presented to the governor, that that whole series
12 here of what would have been available to the governor
13 repeat itself for the successor. If that idea can be in-
14 corporated, it shouldn't pose any problems.

15 THE CHAIRMAN: I understand the committee is
16 going to take this under advisement as to whether they think
17 this is or is not advisable. Is that correct?

18 JUDGE ADKINS: Yes.

19 THE CHAIRMAN: Are there any further questions
20 or comments? If not, Section (c).

21 JUDGE ADKINS: Passage over Veto. If the gover-

1 nor vetoes a bill, he shall return it to the General
2 Assembly within ten days of presentation if the General
3 Assembly is in session. Any bills that is returned by
4 the governor shall be reconsidered by the General Assembly
5 and if upon reconsideration, three-fifths (two-thirds) of
6 all members of each house shall agree to pass the bill,
7 it shall become law.

8 You will note we have bracketed two-thirds as
9 an alternate depending upon the decision of this group
10 today. I think our feeling would be that three-fifths
11 is probably sufficient though I am not sure our committee
12 as such has acted on that matter. My own feeling is three-
13 fifths in this instance would be sufficient.

14 THE CHAIRMAN: Are there any comments or ques-
15 tions other than on the two-thirds or three-fifths? We
16 will hold that question for the moment.

17 MR. MINDEL: Perhaps we should substitute the
18 word may instead of shall. Does the Legislature have to
19 return the bill? They don't have to do anything, do they,
20 Judge?

21 JUDGE ADKINS: I am not sure I know the answer to

1 that. My recollection is if a bill is returned, it
2 automatically comes up on a motion to either sustain or
3 override the veto. I think this is probably a wise pro-
4 cedure to be sure it receives legislative attention. I
5 see no objection to having it automatically reconsidered
6 on proper motion.

7 MR. MINDEL: Is that the practice now?

8 JUDGE ADKINS: I think it is the practice now.
9 The veto message is read across the reading desk, and
10 it automatically comes up for a motion to sustain or over-
11 ride.

12 MR. BARD: Judge, did you take into considera-
13 tion this matter of returning the bill early in the next
14 session of the same Legislature?

15 JUDGE ADKINS: I am not sure I understand your
16 question. We did consider the possibility or the advis-
17 ability of the present provision in the Constitution which
18 provides that bills vetoed after adjournment shall be
19 immediately returned to the next session for consideration.
20 We considered it and rejected it. We felt that the bill,
21 once vetoed, after the session adjourned, should be de-

1 ceased and that if the bill had sufficient power behind
2 it, the bill should be reintroduced and reenacted. It
3 was a matter of policy that the committee acted on quite
4 early.

5 DR. BARD: It is a change in the current prac-
6 tice?

7 JUDGE ADKINS: Yes, an amendment made in the
8 late '50's, I think.

9 DR. BARD: It was 1959. Previously he returned
10 it under all circumstances, and I think at present he
11 returns it only during the session of the four-year term.

12 JUDGE ADKINS: That is right.

13 DR. BARD: According to this, he would not return
14 it under any circumstances.

15 JUDGE ADKINS: That is right, if the Legislature
16 has adjourned and he vetoes it, the bill has to be reintro-
17 duced under our proposal.

18 DR. BARD: It is a significant change. I think
19 we ought to discuss it and see it in the light of this
20 amendment. I would like to ask the Judge where they made
21 the change.

1 MR. POWER: What Dr. Bard is talking about, I
2 think my response was perhaps to legislative abuse.
3 The whole procedure of submitting the bill to the next
4 legislative session was introduced by amendment and sub-
5 sequently limited in 1959. The abuse was the governor
6 had a large degree of discretion about when to suffer a
7 bill to be presented to him. He could, by not permitting
8 the bill to be presented to him, even though passed early
9 in the legislative session, prevent -- well, he could
10 pocket veto the bill after the Legislature adjourned
11 and permanently preclude the Legislature from ever having
12 an opportunity to override.

13 In this section, since we give the Legislature
14 a technique whereby they can, by passing a bill early in
15 the legislative session, guarantee the right to override,
16 we think that the return to the next legislative session
17 is no longer necessary.

18 DR. BARD: How about those bills that pass in
19 the last days of the session?

20 MR. POWER: In the next legislative session, if
21 the Legislature is concerned enough, they can pass them

1 early in the session and if they are again vetoed, they
2 can override the veto and the bill will still take effect.

3 THE CHAIRMAN: Are there any other question?
4 other than the question in regard to the two-thirds or
5 three-fifths?

6 DR. BURDETTE: I should offhand prefer to see
7 in (c) some type of language which would provide three-
8 fifths or two-thirds of all members of each house voting
9 by Yeas and Nays to be recorded in the journal. I think
10 this language could be construed to mean if somebody
11 brought a letter from home that he was for it, he would
12 be counted in the agreement.

13 The present Constitution expressly requires a
14 vote by the Yeas and Nays to be recorded in the journal.
15 While I believe Dr. Bard's committee has done the same
16 thing, I'm not sure that the language in that report
17 which we have adopted carries over into this one.

18 THE CHAIRMAN: Judge Adkins, would you object if
19 the Committee on Style made the language of this conform
20 to the language for the passage of the bill?

21 JUDGE ADKINS: I should be very happy to have

1 the Committee on Style make such a change. It seems to
2 me Section 15 of the report we considered before supper
3 controls that, however. I would assume that language
4 was broad enough.

5 DR. BURDETTE: I am afraid not. Passage over
6 a veto, I think is different.

7 MR. SAYRE: In the Legislative Department it
8 would seem to me all votes in final passage should have
9 Yeas and Nays recorded, and that would encompass this
10 problem. Any final vote, including a final vote for re-
11 consideration.

12 THE CHAIRMAN: Did you follow that, Dr. Bard?

13 DR. BARD: Not fully.

14 THE CHAIRMAN: The suggestion Mr. Sayre made
15 was that in the article dealing with the Legislative De-
16 partment the provision be that all votes on final action
17 be recorded Yeas and Nays, not just final passage of the
18 bill.

19 DR. BURDETTE: Including reconsideration after
20 the veto or some such language.

21 THE CHAIRMAN: Any further question or comment on

1 this question other than the three-fifths, two-thirds'
2 question? If not, the committee recommends that the
3 proportionate vote for passage over veto be three-fifths.
4 Does anybody care to submit a different proportion? If
5 not, it is three-fifths. I'm sorry. Mr. Martineau.

6 MR. MARTINEAU: To get the matter on the floor,
7 I think it should be two-thirds, and I so move.

8 DR. BARD: Second.

9 MR. BROOKS: Could I speak on this question?

10 THE CHAIRMAN: Mr. Brooks.

11 MR. BROOKS: I think there is a great deal more
12 to be said in favor of uniformity of the extraordinary
13 vote provision in the Constitution than there is to draw-
14 ing a distinction between three-fifths and two-thirds.

15 I don't have any preference between the two,
16 but I think one of the objectives of this Commission should
17 be to write a simplified and easily understandable Con-
18 stitution by the majority of the people of the State as
19 is possible. I think one of these principles would be
20 to have exceptional votes and things of that kind that
21 people can remember. As a matter of fact, all of the

1 recommendations to the 1876 Constitution were uniformly
2 presented as two-thirds. The three-fifths that appear
3 in the Constitution all crept in through individual argu-
4 ments in the convention itself and each was a compromise.

5 I think that is likely to occur, unfortunately,
6 at any convention held, but I think it would be well for
7 the Commission itself to begin with a principle of what
8 should be an extraordinary vote. The real fundamental
9 doctrine is that all the votes ought to be pure majority
10 of a representative body representing the people. But
11 only in rare situations should an exceptional vote be
12 required. I think then, if you follow that doctrine
13 when you have an extraordinary provision, some other vote
14 than a majority ought to be required, but that there is
15 little distinction between rationalizing the difference
16 between three-fifths in one case, two-thirds in another
17 and trying to rank the importance of the various extraordi-
18 nary votes requiring more than a majority.

19 But I am certain, and we have in our record from
20 the legislative sessions, that it is indicated that it
21 is easier to remember a single exceptional vote even by

1 legislators who are supposedly well versed in the rules
2 of the law-making process as to what votes are required
3 for particular different actions, that if we just have a
4 standard one, most people can remember that without hav-
5 ing to look up each situation.

6 THE CHAIRMAN: Any further discussion on this
7 motion?

8 MR. HOFF: I agree thoroughly with Mr. Brooks.
9 I think uniformity in this instance would be a great help
10 to everybody, both legislators and the public.

11 MR. MARTINEAU: Without getting into the debate
12 whether there should be something uniform in here, it
13 seems to me of all the areas in which an extraordinary
14 vote is required, the one of passage over a veto should
15 be the one that is two-thirds. I think it was mentioned
16 before that you should have a higher percentage, if you
17 have a higher percentage in any case, in those cases where
18 you are reversing the action of someone else. That is
19 the case here. I really think that if in no other, this
20 should be the one instance where a two-thirds vote ought
21 to be required because it is the classic case where one

1 branch of the Government says something is bad for the
2 people and another branch of the Government is saying some-
3 thing is good for the people. One branch is saying it
4 is good for the people, that branch should be required
5 to have a great deal of unanimity, if not complete unani-
6 mity. I think we should have a two-thirds vote.

7 MR. MILLER: My only comment is I would be in
8 favor of two-thirds all the way along the line if it were
9 two-thirds of those present and voting, but if we are
10 going to make it a poll of the entire eligible membership,
11 I think three-fifths is sufficient. I think what Mr.
12 Brooks and Senator Hoff have said is very important. I
13 think you don't want to have people on the floor of the
14 Legislature having to rush to look at the Constitution
15 to know what they want to do on a particular bill.

16 MR. SAYRE: The way I would like to envisage
17 the voting composition is 51 per cent of each house and
18 51 per cent of both houses in joint session and then the
19 second would be three-fifths of each house and then three-
20 fifths of both houses in joint session. I don't think we
21 should have any more than those combinations. It is my

1 feeling.

2 DR. BARD: I was going to say that the two-
3 thirds, although legal, would be 96 out of 142. If it
4 is a worthy cause, we ought to be able to get 96. I,
5 too, believe that what happens quite often under the pre-
6 sent circumstances is that they are not too sure, and the
7 people who are working one way or another are often dis-
8 illusioned about the whole thing after they think they have
9 enough because they don't understand which fraction is in
10 use.

11 THE CHAIRMAN: Any further comment? Are you
12 ready for the question?

13 MRS. FREEDLANDER: Question.

14 THE CHAIRMAN: The question arises on Mr.
15 Martineau's motion to require a two-thirds vote of all
16 members, all elected members, to override a veto. Those
17 in favor please signify by a show of hands. Those opposed.
18 Nine to nine. I would say the motion failed.

19 MR. CASE: I didn't vote.

20 MR. MARTINEAU: Could we have a recount and
21 give those who didn't vote a chance to vote?

1 THE CHAIRMAN: The motion is lost. That is
2 if we are going to make progress.

3 MR. BROOKS: What was the motion?

4 THE CHAIRMAN: To substitute two-thirds instead
5 of three-fifths.

6 DR. BURDETTE: What is it?

7 THE CHAIRMAN: Three-fifths.

8 MR. CLAGETT: We supported the vote on non-
9 uniformity then.

10 MRS. BOTHE: We are consistent.

11 MRS. FREEDLANDER: A point of information.
12 When Judge Adkins made his report, he did not state that
13 the committee was in favor of either one. He said it
14 would be left up to the Commission. I wondered --

15 THE CHAIRMAN: I understood him to say the com-
16 mittee supported three-fifths. Maybe I misunderstood him.

17 MR. CLAGETT: I believe he said the committee
18 had not acted on it. It was his personal --

19 THE CHAIRMAN: Let's ask him.

20 JUDGE ADKINS: The committee votes three to two
21 in favor of three-fifths. I assume it is the recommenda-

1 tion that it be three-fifths. I must say it is not a
2 clear decision on the part of the committee. I would hate
3 to see it decided by a tie vote.

4 THE CHAIRMAN: It is an important matter and
5 involves a principle. Am I correct in my belief that
6 the only provision in the legislative article which em-
7 braces this principle of extraordinary vote is the one
8 on extending the session in which we agreed on the two-
9 thirds vote?

10 DR. BARD: So far we voted two-thirds on every-
11 thing.

12 THE CHAIRMAN: You say everything we voted upon,
13 but the only thing we voted upon thus far was extension.

14 DR. BARD: Put it that way.

15 JUDGE ADKINS: Disability.

16 MR. SAYRE: Expulsion.

17 THE CHAIRMAN: Two-thirds. Extending the session
18 is two-thirds. Was there anything else we have actually
19 taken a vote on?

20 JUDGE ADKINS: The disability provision, no
21 specific vote, but it was inherent in the recommendation.

1 It was recommended that it be two-thirds.

2 MR. MARTINEAU: Impeachment.

3 MRS. FREEDLANDER: Impeachment was two-thirds.

4 MRS. BOTHE: On that subject I sympathize with
5 the uniformity arguments, that if they aren't overridden
6 by discrepancy of importance of various issues, I would
7 be willing to reverse my vote on the last motion, but I
8 suggest perhaps we go through the whole Constitution and
9 consider these various places where the three-fifths,
10 two-thirds comes up and then reconsider after we found out
11 how many instances of discrepancy there are.

12 If there are only one or two, maybe we will re-
13 verse the uniformity. If there are not, stick with our
14 views on the particular issue.

15 THE CHAIRMAN: That might be worthwhile, but we
16 have to arrange to have some scorekeeping.

17 DR. JENKINS: I was called out at this critical
18 moment, I'm sorry. I would have voted for three-fifths.

19 THE CHAIRMAN: The action is the same.

20 MR. CLAGETT: What did we provide with respect
21 to referendum? Was that three-fifths or two-thirds?

1 THE CHAIRMAN: Three-fifths. It was not --

2 MR. CLAGETT: At Easton. We have gone two-
3 thirds on expulsion, impeachment, disability, and the
4 only three remaining, veto, referendum --

5 THE CHAIRMAN: Constitutional amendments, yes.

6 MR. CLAGETT: Nobody has considered consti-
7 tutional amendments.

8 THE CHAIRMAN: The committee chairman said she
9 didn't want to yet because the committee hadn't considered
10 it. Let's go ahead, with the understanding that this
11 whole question of the proper ratio on extraordinary votes
12 could be considered after we have considered the details.

13 JUDGE ADKINS: Supplementary Appropriation Bills.
14 The governor may strike out or reduce items in supple-
15 mentary appropriation bills and the procedure in such
16 cases shall be the same as in the case of the disapproval
17 of an entire bill by the governor.

18 THE CHAIRMAN: Any question or comment?

19 MR. MILLER: I would like to understand a little
20 better. Is that approving a line veto?

21 JUDGE ADKINS: Yes, that's a line item veto

1 in supplementary appropriation bills.

2 MR. MILLER: It doesn't knock out the whole bill?

3 JUDGE ADKINS: It may or may not, but he can
4 strike out or reduce items in supplementary appropria-
5 tion bills. That would be a line item consideration in
6 supplementary appropriation bills only. Of course, the
7 original budget bill would be his own product.

8 MR. CLAGETT: How would this affect a supple-
9 mentary appropriation bill for the benefit of the judi-
10 ciary? Would it apply here as well? As I recall, the
11 budget for the judiciary is not subject to being reduced.

12 THE CHAIRMAN: That hasn't been acted upon yet.
13 That would be one of the provisions in the language
14 drafted, but it hasn't been acted upon by the Commission.

15 MR. CLAGETT: My question of the chairman here
16 is whether or not this would also apply with respect to
17 supplemental appropriation bills recommended by the Chief
18 Justice or the judiciary in general?

19 MR. MARTINEAU: Could I answer that?

20 JUDGE ADKINS: I can't answer that because I am
21 not sure what the final language in the judiciary article

1 will be.

2 In the absence of something specific in the
3 judiciary article reserving the power to the judiciary
4 to make its own budget, I would say this would apply.

5 THE CHAIRMAN: Heretofore the provision in the
6 judiciary article, the proposed provision is referred
7 jointly to the Committee on the Judiciary and the Finance
8 Committee, and we haven't heard from them yet.

9 MR. MARTINEAU: The problem doesn't arise even
10 under our proposal because under our proposal the judi-
11 ciary budget is to be submitted to the governor and in-
12 cluded in his budget. There is no question of supplemental
13 appropriations. That is part of the governor's budget.

14 MR. CASE: With all due respect to Mr. Mar-
15 tineau, and supporting Mr. Clagett, it could happen in
16 that a supplemental appropriation bill is any bill con-
17 jured up by a member of the Legislature after the budget
18 bill has been passed, if he can find the necessary revenue
19 sources. So that a supplemental appropriation bill for
20 the judiciary conceivably could originate on the floor of
21 either house.

1 That being true, it is perfectly proper in my
2 judgment and, I think, the judgment of our committee that
3 it be subject to executive veto. So we think this is
4 proper. I, personally, think this is a proper provision.

5 MR. MARTINEAU: To answer that, I think the
6 position of our committee is that we agree that should
7 be subject to veto.

8 THE CHAIRMAN: Then there is no dispute.

9 MR. MARTINEAU: No, the question Mr. Clagett
10 was raising was about the budget as prepared by the
11 judiciary department.

12 MR. CASE: No, it was not. That is exactly the
13 point.

14 MR. MARTINEAU: I misunderstood.

15 MR. CLAGETT: It is clarified. I am satisfied.

16 THE CHAIRMAN: Is there any further discussion?
17 If not --

18 JUDGE ADKINS: That completes our report, Mr.
19 Chairman.

20 THE CHAIRMAN: Now, we are going to proceed to
21 a consideration of The Fourth Report of the Committee on

1 Miscellaneous Provisions. That is the report which you
2 had for quite some time. We will deal only with
3 Militia Provisions beginning on page 11.

4 While you are looking for that, I would like
5 to ask your indulgence, particularly those members of
6 the Commission with legislative experience, to go back
7 to the report of the Committee on the Legislative Depart-
8 ment because I think that we may have inadvertently done
9 something we don't want to do. Do we not presently in
10 the Legislature have a system under which third reader
11 bills can be amended on final passage by suspension of
12 rules without the bill being reprinted?

13 MR. CASE: It has to be printed.

14 THE CHAIRMAN: Can't you make an amendment on
15 the third reader bill and by suspension of rules move
16 on to final passage without reprinting it?

17 MR. CASE: I always thought they had to print
18 them, had to go back up, have the amendment printed on.

19 MR. DELLA: Third reader bill cannot be amended
20 in the house it originated from, but a third reader bill
21 can be amended in the other house.

1 THE CHAIRMAN: The point is: Can it be amended
2 without being reprinted?

3 MR. DELLA: No, it has to be reprinted. If it
4 comes in the same house, they want to amend a third reader
5 bill, it is referred back to second reader, open for
6 amendments, amendments attached to it, and reprinted again,
7 it goes to the other house, they can attach amendments
8 on without reprinting.

9 THE CHAIRMAN: That's what I was asking you.

10 MR. DELLA: That's in the second house, though.

11 THE CHAIRMAN: But then it is not reprinted be-
12 fore it is passed finally by the second house?

13 MR. DELLA: Not necessarily. It would be printed
14 before the governor signs it.

15 MR. SYKES: It wouldn't be passed finally by
16 the second house, if the second house makes an amendment,
17 it has to go back to conference, has to be repassed by
18 the first house concurring in the amendment.

19 THE CHAIRMAN: No, it goes back to the other
20 house and if the other house concurs in the amendments,
21 it doesn't require second action by the amending house.

1 In other words, if a house bill goes through the House
2 and goes to the Senate, it can be amended on third reader
3 in the Senate. The amendment can be typewritten on and
4 it can go back to the House and the House concurs in the
5 amendments without the bill being reprinted. It is then
6 engrossed before it is presented to the governor. Isn't
7 that the procedure?

8 MR. CASE: I thought they had to be reprinted,
9 an enrolled bill.

10 THE CHAIRMAN: Let me suggest, instead of taking
11 time to debate, that can be the Committee on Legislative
12 Department who will consider that, in conjunction with the
13 amendment that was suggested on the floor to one of the
14 sections about printing on final passage.

15 MR. CASE: Mr. Chairman, despite that fact,
16 I think no matter what the practice is now, I think that
17 before a bill is finally passed, it ought to be reprinted
18 so that everybody can read the amendments that have been
19 laid on it.

20 THE CHAIRMAN: I am not suggesting the vote be
21 changed, but if what we have done here is a change in the

1 existing practice, our report should indicate it.

2 MR. CASE: I agree with that.

3 THE CHAIRMAN: I suggest the Legislative Com-
4 mittee find out and put it in the report.

5 MR. CASE: I think the judgment of the Com-
6 mission on that is sound.

7 MR. BROOKS: We checked that. We know it is.

8 THE CHAIRMAN: Mrs. Bothe.

9 MRS. BOTHE: This report has been in the hands
10 of the Commission so long that I am just reviewing it
11 myself for the first time in three months. Starting on
12 page 11 of the report labeled Fourth Report of the Com-
13 mittee on Miscellaneous Provisions dealing with the mili-
14 tia. There is a separate section of the present Consti-
15 tution dealing with the militia which we have quoted on
16 page 11.

17 There are also some other parts of the Constitu-
18 tion which come within the purview of the militia article,
19 particularly Article 28 through Article 32 in the Declara-
20 tion of Rights. On the Declaration of Rights, the committee
21 has referred consideration of them to us. We have incor-

1 porated them in our recommendations for sections on
2 the militia.

3 Also, without consultation, I believe, with the
4 Committee on Executive, we have considered Section 8
5 of Article 2, which deals with the powers of the governor
6 with respect to the militia, and have incorporated certain
7 recommendations from the powers granted presently in
8 Section 8 of Article 2.

9 We propose a section on the militia without
10 comment as to whether it should be separately enumerated
11 or placed in a general government section which would read
12 as follows:

13 The General Assembly may provide for a militia.
14 The governor shall be its commander-in-chief, and shall
15 appoint its officers. The governor may call out the
16 militia to repel invasions, suppress insurrections, and
17 enforce the execution of the laws. The military power
18 of the State shall be and remain subject to civil control
19 at all times, and only persons in active military service
20 shall be subject to trial by a military court.

21 That one section is proposed to cover those parts

1 of the four sections of the Declaration of Rights and
2 of the present three sections of the militia article,
3 it would be all that is necessary in a new Constitution
4 to take care of the militia.

5 Upon investigating other State Constitutions,
6 Mrs. Freedlander reviewed, I think, forty-nine of them
7 and we found that all of them carried some provision
8 regarding the militia. Most of them provide the governor
9 shall be the commander-in-chief. Most of them provide
10 that no person shall be subject to court martial.

11 We have had the benefit of the views of Generals
12 Gelston, Reckord, and also General Ogletree, the three
13 heads of the National Guard, General Gelston just having
14 gone back to work in that capacity. Our committee report
15 states that this proposed section was presented to them
16 and that all of them concurred that it was appropriate
17 and covered the necessary fields.

18 I might state since the report was submitted
19 to the Commission, we have received some communications
20 from Generals Ogletree and Reckord suggesting some expanded
21 language which the committee has not seen fit to include.

1 As you will note, we do not recommend that
2 there be any constitutional office either of adjutant
3 general or of assistant adjutant general or any particular
4 officer. We felt this was one of a number of consti-
5 tutional offices under the present Constitution that
6 would be eliminated.

7 We felt that the barebones provision contained
8 in the proposed section would most adequately cover the
9 existence of the militia.

10 One area of concern which we had in going
11 through the provisions now on the Declaration of Rights
12 regarding the militia was that contained in Article 32
13 quoted at the top of page 12, that no person except
14 regular soldiers, marines, and mariners in the service
15 of this State, or militia, when in actual service , ought,
16 in any case, to be subject to, or punishable by martial
17 law.

18 We were somewhat concerned as to whether our
19 proposed provision that only persons in active military
20 service shall be subject to trial by military court would
21 cover what is now encompassed by Section 32, and we asked

1 a research assistant to make, and he did make a very
2 extensive report on that subject, coming up with the con-
3 clusion that what was meant by Article 32 was not that
4 there could be no martial law as we understand it in
5 common nomenclature. In other words, Section 32 did
6 not preclude the governor's imposing a military regime
7 on an area of the State under emergency conditions, but
8 that it only was intended to preclude trial of civilians
9 by military court. So that we feel that all of the
10 sections that are in the present Declaration of Rights
11 are either adequately covered by our proposal or are
12 unnecessary.

13 Of course, Article 28 is nothing but a statement
14 of principle which General Reckord, I believe, thinks
15 should remain in the Constitution, but the committee felt
16 was unnecessary.

17 Article 29 again is merely a statement of prin-
18 ciple and has no place in the type of Constitution we are
19 aiming for.

20 Article 30. The sense of Article 30 is included
21 in our proposal with the statement that the military power

1 of the State shall be and remain subject to civil control
2 at all times.

3 Article 31 gave us some pause for discussion
4 with the Generals. That is the section stating that the
5 soldier shall not be quartered in any house, which is
6 contained in a number of State Constitutions. But we felt
7 that the danger needing to be protected against here was
8 so remote that it didn't need constitutional inclusion,
9 and we don't recommend that any such principle be incor-
10 porated in the new Constitution.

11 I have already discussed Article 32.

12 As I stated, we make no recommendation as to
13 where the militia section belongs. The committee has been
14 giving some consideration to a recommendation that there
15 be a general government article that would be a catch-all
16 for a number of provisions such as this one.

17 THE CHAIRMAN: Are there any questions?

18 MR. BOND: I might point out to the committee,
19 I don't disagree with anything Mrs. Bothe said, but the
20 last clause -- and only persons in active military service
21 shall be subject to trial by military court -- that is a

1 direct conflict with the Uniform Code of Military Justice,
2 an act of Congress, and is also in conflict with the
3 line of Supreme Court cases which, while restrictive,
4 still say under certain circumstances personnel who have
5 been released from active duty are subject to military
6 tribunals.

7 MRS. BOTHE: We think we are referring to the
8 military discipline of the State's militia. We can't
9 preclude trial of people by the Federal military arm, I
10 am afraid.

11 MR. MILLER: Mr. Chairman, I am a little doubt-
12 ful about the words active military service. I think this
13 is a very good section, but there is a certain distinction
14 in military outfits as to when a person is on active duty.
15 It usually involves a pay status.

16 As I read this, if you construe it narrowly,
17 there would be no possibility for disciplinary action in
18 certain instances which are a very important part of, you
19 might say, civilian recruit training of military offenses
20 that occur during a time when the person in question might
21 be in uniform but wasn't drawing pay.

1 If it is possible to clarify that so that
2 military discipline would continue without some technical
3 word, I think it would be desirable.

4 MRS. BOTHE: We discussed this, at least
5 peripherally, with the Generals, and it was their feeling
6 that this language would not conflict with the militia
7 article. We had no intention that only those who were
8 being paid were people definable as active in military
9 service.

10 On the contrary, of course, the meaning is
11 people who at the particular moment that these plans
12 are imposed are in the State service, whether being
13 paid or whether they are drafted or under whatever cir-
14 cumstances they happen to be.

15 I might comment under existing code provisions
16 we were told that the most stringent penalty that could
17 be imposed was something like ten days in the jail. The
18 powers are not very extensive under the existing code.
19 They could be increased by the Legislature, of course.

20 MR. MILLER: It is not the idea of heavy of-
21 fenses that would be handled in the State Courts. But as

1 I read this, if any soldier was ordered to report to the
2 Armory on such an occasion, until he reported he wouldn't
3 be subject to military discipline.

4 MRS. BOTHE: I think that is perhaps stretching
5 a point, because when he is ordered into service, if he
6 is within the purview of a person subject to military
7 discipline, he is told to report, and if he fails to do so,
8 he is in.

9 MR. MILLER: If he is only supposed to be there
10 two hours in the evening, would you consider him still
11 on active service?

12 MRS. BOTHE: Yes.. As a matter of fact, an
13 example was given to us that the most frequent kind of
14 discipline imposed appears to be for Reserve people who
15 don't show up.

16 MR. MILLER: That is right.

17 MRS. BOTHE: They are meted out fines ordinarily,
18 but these are the people whom we were told could be dis-
19 ciplined under such provision, and they are the ones that
20 don't come that night.

21 MR. BOND: I might say this. As a matter of

1 history, I am a legal specialist in the Naval Reserve,
2 just retired, I participated in the court martials of
3 Reservists not on active duty, but who have been on train-
4 ing duty. Sometimes it is very important that those people
5 be subject to minor military courts and be subject to
6 military judgment.

7 I would again say I think this language is ex-
8 tremely broad, but I do think it is in conflict with the
9 Uniform Code, which specifically applies to Reservists
10 on training duty and National Guardsmen on training duty.

11 I also again see it is in conflict with the
12 line of Supreme Court decisions on people who have been
13 released from active military service and who have been
14 convicted of crimes, tried by military tribunals and con-
15 victed of crimes committed while on active duty.

16 THE CHAIRMAN: Mrs. Bothe, if you change the
17 language "in active military service" to "actually in
18 military service," wouldn't it serve your purpose and meet
19 the objection?

20 MRS. BOTHE: Yes, I was thinking perhaps that
21 the change might be to have it refer to a military court

1 of the State because I believe a lot of Mr. Bond's com-
2 ment pertains to military discipline on a Federal basis.
3 Of course, we would have no control over that.

4 THE CHAIRMAN: I was thinking also of Mr.
5 Miller's comment. Instead of saying "in active military
6 service," if you said "actually in military service" --

7 MRS. BOTHE: If Mr. Miller feels it would suit
8 the purpose, I think that is just as ambiguous and perhaps
9 more so than active.

10 MR. MILLER: I would suggest if you just left
11 out the word active and just said persons in military ser-
12 vice --

13 MRS. BOTHE: That, we wouldn't want to accept
14 for the reason a number of people, as you know, are in
15 the National Guard or in the militia who are only inci-
16 dentally so. We would want to make it clear they are only
17 subject to the military courts while in active actual ser-
18 vice. If they go through a red light driving on a date
19 on Saturday night --

20 MR. MILLER: Perhaps we are not in agreement on
21 what you mean by actual military service. Would you con-

1 sider a person who had enlisted or was commissioned
2 in the National Guard not on military service unless he
3 had reported for duty?

4 MRS. BOTHE: Or was called for duty. I will
5 give an example of what I think the committee means.
6 Suppose an individual is driving a jeep while on his
7 two hour a night Reserve duty and he drives recklessly
8 and smashes it up. He could be subjected to military
9 discipline.

10 However, if the same individual the next night
11 is out with his girl-friend and driving his own automo-
12 bile recklessly, that would be subject only to civil con-
13 trol.

14 MR. MILLER: Of course, actually in those cases,
15 there has never been much trouble, but the military courts
16 always were eager to have the civil courts take those
17 kinds of cases.

18 Suppose a soldier in the Maryland National Guard,
19 against orders puts on his uniform and goes out and does
20 things that are contrary to the good of the service.
21 Would you tie the hands of the military courts from taking

1 disciplinary action?

2 MRS. BOTHE: If he were doing it purely as a
3 civilian, yes.

4 THE CHAIRMAN: Mr. Miller, so that we have the
5 matter before us properly, do you want to move that the
6 word active be deleted?

7 MR. MILLER: I would like to move that. I
8 would be glad to have another word in there, but I think
9 active has a different connotation to a great many people.

10 THE CHAIRMAN: Is there a second to that motion?

11 DR. BARD: I second it, if I can amend it.

12 THE CHAIRMAN: Let's get a second.

13 DR. BARD: I will second it and offer an amend-
14 ment.

15 MRS. FREEDLANDER: Mr. Chairman, this is an
16 article that has some technical aspects to it that we
17 learned on the job, in listening to Generals Reckord,
18 Ogletree and Gelston. All of them seemed to be agreed
19 that the Military Code of Maryland has stood them in good
20 stead for over fifty years, and they are perfectly satis-
21 fied with it. They didn't want too much in the Constitu-

1 tion that would jeopardize their bargaining and lever-
2 age with the Legislature, so to speak.

3 They were for simplicity. When asked pointed-
4 ly, they might even have agreed to not having an Article
5 1, The Militia, that's how satisfied/with the Military
6 Code of Maryland.

7 It was in consultation with them that we re-
8 solved this. Furthermore, much of what pertains to the
9 National Guard today comes from the Federal Government,
10 they said. That legislation takes precedence over anything
11 we would state. I think we have to keep this in mind.

12 DR. BARD: I was going to suggest that it read
13 military service shall be subject to trial for military
14 infractions. That would avoid the problem that Mrs. Bothe
15 raised where one is not involved in a military infraction,
16 this violation of the speeding law was not a military
17 infraction, and perhaps takes care of --

18 MRS. BOTHE: He breaks up the jeep.

19 DR. BARD: -- perhaps what Congressman Miller
20 talked about.

21 MR. CLAGETT: I still don't think we have touch-

1 ed upon the infractions that may be committed by National
2 Guard Air Force personnel. You may be on a military
3 flight from Washington to Miami and then decide to fly
4 on down to New Orleans because you've got a good friend
5 down there. It would be outside the scope of any of
6 the suggestions made at the present time. That can be
7 carried to the plane, and you are on your way into town,
8 something turns up, I think that actually neither General
9 Gelston nor General Reckord nor any of that group are
10 knowledgeable enough insofar as Air Force activities are
11 concerned to pass on that question.

12 We have had a number of instances involving
13 National Guard personnel where disciplinary action has
14 been taken notwithstanding the fact they were neither in
15 the military service nor on active duty at the time of
16 the infraction.

17 MRS. BOTHE: Was this action taken under State
18 law?

19 MR. CLAGETT: Under State law, taken under
20 military law, summary court martial.

21 MR. SYKES: Mr. Chairman, I think we have a ready-

1 made solution here in Article 32 of the Declaration
2 of Rights as it exists today. The State Code of Mili-
3 tary Justice says -- it apparently functions to every-
4 body's satisfaction under the existing language, which
5 is that militia when in actual service can be put under
6 military law.

7 The article now reads that no person except
8 regular soldiers, marines and mariners in the service of
9 the State or militia when in actual service ought in any
10 case to be subject to or punishable by martial law.

11 I don't suppose there are today any regular
12 soldiers, marines, and mariners in the service of the
13 State because the Federal Government has exclusive juris-
14 diction so far as armies are concerned. But the militia
15 would be the ones who would be subject to courts of the
16 State, and I would think that we could adapt the language
17 when in actual service.

18 I would propose, therefore, an amendment to the
19 last part of the committee's proposal which would read:
20 And only members of the militia when in actual service
21 shall be subject to trial by military court of this State.

1 So as to make perfectly clear we are talking about only
2 the State.

3 THE CHAIRMAN: Would you accept that, Mr. Miller?

4 MR. MILLER: I am afraid that still wouldn't
5 cover the point I am concerned about, which is to deprive
6 the National Guard officers of their disciplinary powers.
7 This isn't in connection with major crimes that I am con-
8 cerned about.

9 A member of the military service behaves in a
10 way that brings discredit upon the military service,
11 whether on active service or not, there ought to be op-
12 portunities for disciplinary action to be taken against
13 him.

14 MR. SYKES: Could I speak to that a moment?
15 Maybe I can persuade the congressman to go ahead.

16 The theory of the suggested amendment is that
17 apparently under the present language of the Declaration
18 of Rights the State Military Department has had precisely
19 the power that Congressman Miller is afraid of jeopardizing.
20 I would think if we adopt the language, there would be
21 little doubt that our intention would be to continue

1 the present practice and to keep on with all of the
2 practical interpretation of this language. That's the
3 great benefit of adopting in precise terms language
4 which has been established so long. I think by doing
5 this we would preserve the advantage of the practice that
6 you are worried about.

7 THE CHAIRMAN: Are you persuaded, Mr. Miller?

8 MR. MILLER: I am moved. I am not entirely per-
9 suaded yet.

10 MRS. BOTHE: If I may, I would like to poll the
11 one member of the committee who isn't within the rump
12 session here as to whether she would accept that language
13 proposed by Mr. Sykes. I think the rest of the committee
14 would.

15 MRS. FREEDLANDER: Yes, I would, Madam Chairman.

16 MRS. BOTHE: Then we would substitute that
17 language for the suggested language.

18 THE CHAIRMAN: I don't think we can right now
19 because we have Mr. Miller's motion which we will have to
20 dispose of. Do you want either Mr. Sykes or you
21 move Mr. Sykes' language as an amendment to Mr. Miller's

1 motion?

2 MR. SYKES: I will so move and ask Mr. Miller
3 if he accepts it. If not, I hope it will be seconded.

4 MR. MILLER: I don't want to interfere with
5 parliamentary procedure, but I would like to hear from
6 Mr. Bond because I think he is probably more up on mili-
7 tary law at the moment than most of us.

8 THE CHAIRMAN: Let's get the procedure in order.
9 Will anybody second Mr. Sykes' motion?

10 MR. GENTRY: Second.

11 THE CHAIRMAN: Discussion on the amendment.

12 MR. BOND: I agree that Mr. Sykes' language is
13 all right with one exception. Article 32 says punishable
14 by military law. His proposed new language says subject
15 to trial by military court. There is a great difference
16 between prohibiting trial by military court and saying
17 subject to martial law.

18 You can have a military court act when martial
19 law is not in effect. Therefore, I say the word military
20 court should be deleted, we should take more language from
21 Article 32. With that change, I am agreeable that there

1 is no conflict with Federal law and Federal cases.

2 THE CHAIRMAN: I am not sure I follow your
3 suggestion. Is that, that instead of the words trial
4 by military court of this State you would substitute
5 punishable by martial law?

6 MR. BOND: Subject to punishable by martial law,
7 yes, sir.

8 THE CHAIRMAN: Do you accept the change, Mr.
9 Sykes?

10 MR. SYKES: I guess I am stuck. That is more
11 Article 32 than I even started with.

12 THE CHAIRMAN: I don't know that you are stuck.
13 It is a simple question to accept it.

14 MRS. BOTHE: May we clarify something for Mr.
15 Sykes before he makes up his mind?

16 THE CHAIRMAN: Go ahead.

17 MRS. BOTHE: This was the subject of this rather
18 weighty memorandum by our athletic research director. The
19 reason we very deliberately avoided use of the word martial
20 law as a result of his research is because what is common-
21 ly thought to be martial law is, as he found, the popular

1 term is military rule over civilian community in time
2 of domestic disorder, that is what people think of as
3 martial law.

4 It actually is not martial law, but because of
5 confusion in the public mind we felt we should use the
6 word military court, which would not engender any of that
7 confusion in the future. It was a very deliberate depart-
8 ure from language in Article 32.

9 THE CHAIRMAN: Mr. Sykes, with that explanation,
10 do you accept or not accept the amendment?

11 MR. SYKES: I accept the amendment.

12 MR. CASE: Mr. Chairman, I am glad nobody is
13 confused here except me, because I am hopelessly confused.
14 I would like to know from somebody, some military experts
15 around the table, what is the difference in substance
16 between trial by military court and a trial by or punish-
17 able under martial law.

18 THE CHAIRMAN: Mrs. Bothe just stated, as I
19 understood it, they are the same.

20 MR. CASE: Mr. Bond says they are not the same.

21 MRS. BOTHE: I think I will try to straighten

1 your confusion out. We had a great deal of it, in fact,
2 the generals themselves were uncertain as to what was
3 meant.

4 MR. CASE: They are confused, too.

5 MRS. BOTHE: Some of them thought they were
6 capable of exercising controls over civilians in times
7 when the governor declared martial law. Others thought
8 the governor could declare martial law.

9 The research developed that martial law was
10 military law. However, we sought to avoid this confusion
11 for the future by referring to what was actually meant,
12 which was military law. That is the disciplinary control
13 of the military over the military.

14 MR. CASE: You say though trial by military
15 court.

16 MRS. BOTHE: Right.

17 MR. CASE: That to me has a different connotation
18 than being subject to or punishable by martial law. Just
19 the plain English of it seems to indicate two different
20 thoughts. Are you really saying they mean exactly the
21 same thing?

1 MRS. BOTHE: Yes, we are. We didn't know
2 whether they did either, and this report unfortunately
3 is too long to incorporate in entirety in our report;
4 but the whole history of what was meant by Article 32
5 was traced through the debates in the convention and the
6 common law at the time, and the powers exercised and
7 exercisable by the governor pursuant to his power to de-
8 clare martial law, and that is what the conclusion was,
9 that what was meant by Article 32 was military court.

10 THE CHAIRMAN: Mr. Bond.

11 MR. BOND: I think I can clarify Mr. Case's
12 point.

13 MR. CASE: That's the second attempt.

14 MR. BOND: First, in the National Guard and
15 Armed Forces their company punishments, non judicial
16 punishments, for offenses meted out by superiors in a cer-
17 tain area of command, that is not a military court.
18 There are many more occurrences of that type of discipline
19 than there are of court martials. There is also a very
20 minor type of court martial which has not been typified
21 or typed as a military court which is called a summary

1 court martial, a one-man judicial proceeding with a very
2 small record kept.

3 Above that are two large court martials. One
4 is a seven-man, one a twelve-man, your general and your
5 special. They are what are called military courts.

6 So I think what Congressman Miller and I are
7 saying is that the National Guard and the other Armed
8 Forces can function well, can have this non-judicial
9 punishment, non-court punishment, given by a commanding
10 officer of a ship, captain of a company, not a military
11 court.

12 MRS. FREEDLANDER: It has nothing to do with the
13 State militia.

14 MR. CASE: Would the minor procedures be a
15 military court?

16 MR. BOND: Not a court.

17 MR. CASE: Would it come under the aegis of
18 martial law, subject to or punishable by martial law?

19 MR. BOND: In answer to the first question, I
20 can absolutely say the answer is No. In answer to the
21 second question, I have no idea. I just don't know.

1 THE CHAIRMAN: Mr. Bond, may I ask you a ques-
2 tion. Would Mr. Case's last question be clarified if
3 you didn't use the term martial law and you didn't use
4 the term military court but said military law?

5 DR. BARD: Right.

6 MR. MINDEL: Is there a State military court?

7 MRS. FREEDLANDER: Yes.

8 MR. MINDEL: Aren't we trying to say they would
9 be subject to the provisions of the State military court
10 which could be changed from time to time?

11 THE CHAIRMAN: Could be embraced in the term
12 military law.

13 MRS. FREEDLANDER: Article 65 is the code.

14 MR. GENTRY: I think Mr. Bond's comments relate
15 to discipline in the National Guard under the Uniform
16 Military Code. All we are speaking of here is State mili-
17 tia. The first amendment that was suggested by Mr. Sykes
18 added the words after military court of the State militia
19 or of the State, which I think would bring us back into
20 the only scope which we have before us. That is the
21 action within the State militia, which is very, very

1 limited. We are not talking about National Guard.

2 THE CHAIRMAN: Mrs. Bothe and Mr. Sykes, may
3 I ask you this joint question? Wouldn't at least half
4 of the confusion be minimized at least if we did not use
5 the phrase martial law nor the phrase military court but,
6 with your other amendment, used the phrase military law?

7 MRS. BOTHE: That would be acceptable to us.

8 THE CHAIRMAN: Would you accept that amendment,
9 Mr. Sykes?

10 MR. SYKES: The only thing that bothers me about
11 it is that military law seems to me to be a little bit
12 imprecise. We had the benefit of a research memorandum
13 which says in spite of the fact that martial law has a
14 double sense in popular usage, the Constitution intended
15 to talk about trial by military courts. If that is a
16 fact, it seems to me we would go closer to the spirit of
17 the original Constitution and hit the problem we are try-
18 ing to deal with if we stayed with the idea of trial
19 before the military court.

20 I agree we shouldn't use martial law.

21 THE CHAIRMAN: The difficulty Mr. Bond has is

1 that the lower proceedings he says are not court proceed-
2 ings. The thing that corresponds to what used to be a
3 deck court in the Navy, for instance, is not now a court
4 proceeding.

5 MR. BOND: That is right.

6 THE CHAIRMAN: You would avoid that by use of
7 military law instead of military court.

8 MR. CLAGETT: Actually, isn't his concern that
9 he does not want to interfere with the disciplinary
10 action of summary, although it is a summary court martial,
11 on down to --

12 THE CHAIRMAN: Mr. Bond's point is that precise-
13 ly. He says when you use the phrase military court, you
14 are eliminating all these lower proceedings because they
15 are not courts.

16 MR. SYKES: No, this is phrased the other way.
17 This is a limitation. It says that if there is going to
18 be a trial by a military court, that is the only situation
19 to which this addresses itself, then only militia while
20 in actual service are subject to it.

21 This says nothing at all about whether or not

1 the militia are subject to the company punishment type
2 thing. It is because of the way it is phrased that I
3 think his fears are perfectly well taken care of. This
4 is a protection of civilians against trial by the mili-
5 tary court, and nobody would think they could be subject
6 to company punishment because they are not in a company.

7 THE CHAIRMAN: I think we are losing time. We
8 have a motion. You do not accept the amendment as I
9 remember it -- correct me if I am wrong -- the suggested
10 amendment was the last clause read: And only members of
11 the militia in actual military service shall be subject
12 to trial by, I am uncertain whether you said martial law --

13 MR. SYKES: Tried by military law of this State.

14 MRS. FREEDLANDER: Military law.

15 THE CHAIRMAN: Which is it?

16 MR. SYKES: Only members of the militia when in
17 actual service shall be subject to trial by a military
18 court of this State.

19 THE CHAIRMAN: All right, that's the motion.
20 Any further discussion of that?

21 MR. MILLER: I can only say I don't want to be-

1 labor this, that still doesn't take care of the question
2 of what is actual service.

3 THE CHAIRMAN: That is right. This is a sub-
4 stitute for your motion, we haven't substituted it yet.

5 MRS. BOTHE: One comment. The military law of
6 this State embodied in Article 65 refers to three levels
7 of court martial, which Mr. Bond talked about, and if the
8 word military law were substituted for the court, it
9 would encompass the procedures now in Article 65.

10 MR. MILLER: There is also a point, Mrs. Bothe,
11 that while what Mr. Bond says is true in practical matters,
12 there is in military law a right of appeal from the action
13 of a summary court. You are in the chain of military
14 law even when you start off with company punishment.

15 MR. BOND: I am not concerned about the last
16 phraseology. I think Mr. Sykes by delineating it, saying
17 this applies only to militia in the State of Maryland,
18 that does away with the conflict of Federal law which is
19 the most important thing.

20 THE CHAIRMAN: Any further questions? The quest-
21 ion arises on Mr. Sykes' motion to substitute his motion

1 for that of Mr. Miller. Are you ready for the question?
2 All those in favor of substituting Mr. Sykes' motion for
3 Mr. Miller's motion signify by saying Aye. Contrary, No.
4 The Aye's seem to have it. The Aye's have it.

5 The question now arises on the adoption of the
6 substitute motion. Again I will try to state the language,
7 Mr. Sykes. Correct me if I don't have it exactly. And
8 only members of the militia actually in military service,
9 when in actual service shall be subject to trial by mili-
10 tary court of this State. Any further discussion? Are
11 you ready for the question? All those in favor of the
12 amendment signify by saying Aye. Contrary, No. The Aye's
13 have it and it is so ordered.

14 Is there any further discussion of this section?

15 MR. SAYRE: It seems to me appropriate that
16 this be part of the Executive Article inasmuch as I have
17 four Constitutions here and they are all in the Executive
18 Article because of the governor being commander-in-chief.

19 THE CHAIRMAN: Let's leave that for consideration
20 of the committee since they indicated they are consider-
21 ing where to place this and may make a recommendation that

1 there be a special article.

2 Is there anything further to present in con-
3 nection with your report?

4 MRS. BOTHE: Not if the Commission approves
5 the language of the first part of the report which pro-
6 vides for powers of the governor and eliminates the
7 appointment of the adjutant general, et cetera.

8 THE CHAIRMAN: The Commission approved the
9 language in italics on pages 12 and 13 with the changes
10 just made.

11 MRS. BOTHE: That's our report on the militia.

12 THE CHAIRMAN: That concludes consideration of
13 that report at this time. The education provisions will
14 be considered at a subsequent meeting. I think it is
15 too late to begin consideration of the other report that
16 we had hoped to conclude today because it is now within
17 a few minutes of 9.

18 We have made good progress but, on the other
19 hand, we are behind the schedule. I think we could accom-
20 plish a great deal more if we adjourn now and meet at
21 8:30 tomorrow morning.

1 (Whereupon, the Commission adjourned at 9
2 o'clock p.m. to reconvene at 8:30 a.m. on Monday, September
3 19, 1966.)
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1 CONSTITUTIONAL CONVENTION COMMISSION

2
3 Meeting of the Constitutional Convention

4 Commission held on Monday, September 19, 1966, at
5 8:30 o'clock a.m., at the Adult Education Center
6 University of Maryland, College Park, Maryland.

7 PRESENT:

8 H. Vernon Eney, Esquire
9 Chairman of the Commission
10 Honorable E. Dale Adkins, Jr., Member
11 Dr. Harry Bard, Member
12 Mrs. Elsbeth Levy Bothe, Member
13 Dr. Franklin L. Burdette, Member
14 Richard W. Case, Esquire, Member
15 Hal C. B. Clagett, Esquire, Member
16 Mrs. Maurice P. (Leah S.) Freedlander, Member
17 James O'Connor Gentry, Esquire, Member
18 Walter R. Haile, Esquire, Member
19 Stanford Hoff, Esquire, Member
20 John B. Howard, Esquire, Member
21 Dr. Martin D. Jenkins, Member
 Honorable William Preston Lane, Jr., Member
 Robert J. Martineau, Esquire, Member
 Edward T. Miller, Esquire, Member
 Charles Mindel, Esquire, Member
 Mr. E. Philip Sayre, Member
 Melvin J. Sykes, Esquire, Member
 John R. Hargrove, Esquire, Member
 Charles Della, Esquire, Member
 Mr. L. Mercer Smith, Member
 John Mitchell, Esquire, Member

19 Reported by:

20 C. J. Hunt

and

21 A. A. Castiglione

1 ALSO PRESENT:

2 John C. Brooks, Esquire, Executive Director
3 Dr. Clinton Ivan Winslow, Consultant
4 Dr. John H. Michener, Research Assistant
5 Stephen H. Sachs, Esquire, Reporter

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7 THE CHAIRMAN: The Committee will come to order.

8 We will proceed this morning with consideration
9 of the Seventh Report of the Committee on Elective Fran-
10 chise and Declaration of Rights. Report deals with
11 suffrage and elections.

12 We have two Reports from this Committee. This
13 is the Seventh Report, dated September 18.

14 JUDGE ADKINS: Would you state that again, Mr.
15 Chairman?

16 MR. GENTRY: Seventh Report, Elective Fran-
17 chise.

18 THE CHAIRMAN: Delay that. We will have to
19 change the arrangements because of the inability of
20 some of the reporters to be here until later.

21 We will take up first the First Report of the
Committee on State Finance. Dick, are you ready on that?

1 MR. CASE: Yes, I am ready.

2 THE CHAIRMAN: Do you figure on Stephen Sachs
3 being here?

4 MR. CASE: It doesn't make any difference. He
5 is coming.

6 THE CHAIRMAN: Do you want to delay it until
7 he is here?

8 MR. CASE: No.

9 THE CHAIRMAN: This is a Report dated August
10 21. You have had it for about a month.

11 MR. CASE: This subject is pretty technical
12 and also pretty boring, I am afraid, but I am not going
13 to take a great deal of time in discussing the historical
14 background or hysterical background, as the case may be,
15 of Section 34 of Article III. It is set forth in some
16 detail in the Report of the Committee. We have drawn
17 largely on the reports of the proceedings of the Consti-
18 tution of 1851, because it really was in this Constitution
19 that the first restrictions upon the incurring of State
20 debt appeared in the Maryland Constitution, and incidental-
21 ly, for those, if there are any reporters here, I commend

1 very heartily a thorough reading of that volume, which,
2 while it is classified as a rare book, can be obtained
3 in Baltimore, and it is tremendously interesting and
4 valuable, the information that can be gotten from it.
5 Suffice it to say that the background of this Section
6 stems from the financial crisis of the late 40's. I am
7 talking about 1840 now, when the State was embarrassed
8 and almost defaulted upon its obligations.

9 Curiously enough, State obligations did not
10 have their genesis in the construction of schools or
11 roads or works of that nature, but rather were issued to
12 what we would now consider private corporations, namely,
13 the railroads, canals and turnpikes, and the procedure
14 was that the State would issue the bonds to the railroad.
15 Let's just say the B&O Railroad, which was one of the
16 larger holders, temporary holders of State bonds, and the
17 railroad would then take those bonds and sell them, usually
18 at a fairly steep discount, and usually in the foreign
19 market.

20 The idea was that the State, which had received
21 stock in exchange for the bonds, would be the dividend

1 recipient of these works as they came to be known, works of
2 internal improvement and with the dividends received
3 from the stocks and the yields received from the invest-
4 ments, the bond interest would be paid, and there would
5 be considerable left over to eliminate all taxes, so that
6 the State, going into the business of owning a share in
7 the works of internal improvement, would eventually find
8 a way to eliminate all taxes of all kinds and go merrily
9 on its way, which was a great idea except that it didn't
10 quite work that way in the last analysis, because the
11 depression of '47 came along and the whole thing blew up,
12 including most of the railroads and canals and turnpikes
13 that had been financed, and the State was left with the
14 problem of, for the first time, levying a real estate tax
15 to pay off these bonds, which it did.

16 This abuse was brought to the attention of
17 the Constitutional Convention of 1851, and as a result,
18 Section 34 was enacted.

19 It has been amended from time to time since
20 then, as the Report will indicate, showing at one time,
21 or giving at one time the right to borrow in anticipation

1 of other borrowing, which would be called in the business,
2 bond anticipation financing, and another time to permit
3 some assistance to work of internal improvement to the
4 Southern Maryland counties because the B&O Railroad
5 didn't run in Charles, St. Mary's and Calvert Counties,
6 and finally, to allow the State to issue bonds to finance
7 a veterans' bonus if referendum of the people approved
8 that kind of a loan.

9 Now, that for the historical background of
10 Section 34.

11 Our Committee has taken a considerable amount
12 of time to come up with a meaningful division of this
13 Section, and in this process we have discussed the sub-
14 ject, first among people who are knowledgeable in public
15 finance, lawyers who are knowledgeable in public finance.
16 We have also had hearings in which the leading investment
17 banking houses in Baltimore have been represented, who
18 deal in this subject, and the leading commercial banks
19 in Baltimore were invited to deal in this subject, and
20 a long hearing was held with them. In addition to this,
21 and perhaps even more important, after our judgment was

1 crystallized to a point of a first draft, the Committee
2 then went to New York City, where we were fortunate
3 enough in being able to speak to one of the senior analysts
4 of Moody's Investment Service, which is the Bible of
5 the municipal bond business in this country. Moody's
6 is the most meaningful ranking agency, and when I say
7 ranking, I mean ranking in the sense of placing bonds
8 in the order of their desirability for investment. They
9 are the number one agency which writes municipal bonds,
10 and our draft was submitted to the analysts at Moody's,
11 with a number of questions and answers from this work
12 product with the end result that we have the assurance
13 that the revisions that we propose would not in any way,
14 as far as can be determined as of today, be detrimental
15 to the credit of the State and indeed some of the things
16 that have been suggested could conceivably and in the
17 long run assist materially the credit of the State.

18 Now, the credit of the State is excellent,
19 and it is for this reason that we must go carefully and
20 intelligently about any revision of Section 34 that we
21 try to undertake. The credit of the State is Triple A,

1 which is the highest credit rating that Moody's affords,
2 and it has been that way, except for one short period,
3 for many years. We therefore approach this problem
4 knowing full well that we are at the top now and that the
5 Section that we have had all these years has worked fairly
6 well, and hence its change should be brought about only,
7 as I said earlier, in a meaningful and intelligent way.

8 Despite all that we have, or the Committee
9 recommends a rewriting of Section 34, and the best way
10 to get at this, I suppose, is to look at old Section 34
11 and new proposed Section 34, which you will find as
12 attachments A and B of your Report, and I think,
13 Mr. Chairman, since this is only one section, and since it
14 is somewhat complex, that unless you have a better approach
15 or suggestion of a better approach, I would read sentence
16 by sentence the new material, and then comment on what
17 it takes the place of and what the evils that are sought
18 to be corrected are.

19 THE CHAIRMAN: I think that should be done.

20 MR. CASE: Ladies and Gentlemen, if you will
21 look at V --

1 THE CHAIRMAN: Let me suggest you do that,
2 go through the whole thing, and then we come back and
3 take up sentence by sentence for discussion.

4 MR. CASE: This is the new proposal and bear
5 in mind, we will have to refer back to A. V starts out,
6 The State shall have the power to incur indebtedness for
7 any public purpose in such manner and on such terms and
8 conditions as the General Assembly may prescribe.

9 I might say prefatorially to this, that many
10 of the words used in this particular Section are words
11 apart and have definitive meaning which have been dis-
12 tilled through generations of decisions of appellate
13 tribunals. Everybody around this table knows what a lover
14 of words I am, but unfortunately I was unable to carry
15 forward my own precepts in doing this piece of drafting,
16 and I apologize greatly to you for this, but it is one of
17 the few times that I have sort of been backed out of my
18 own position.

19 Anyway, this sentence gives the general power
20 to the State to borrow money, to incur indebtedness, and
21 it is a general grant of power and at this level, or at

1 first sentence level, it is restricted by the words, any
2 public purpose, which have been the subject of a great
3 number of decisions by courts of last resort, both in
4 Maryland and elsewhere and is essentially what the lawyers
5 at least referred to as the due process test, meaning in
6 substance that no person can be deprived of his property
7 without due process of law, which as further distilled
8 means that unless the money is to be used for the public
9 good, as distinguished for a private good, the State is
10 powerless to extract money from the citizen, so the test
11 here is one which has been accepted as a meaningful test
12 by all jurisdictions, as I say, including our own Court
13 of Appeals in the famous case of Frostburg versus Jenkins.

14 The second sentence fits in with the first:

15 All such indebtedness, reading from Line 3, shall be
16 secured from an irrevocable pledge of the full faith
17 and credit and unlimited taxing power of the State, unless
18 the act of the General Assembly purporting to authorize
19 the creation of such indebtedness concludes such irrevocable
20 pledge, the authorization so authorized shall not be con-
21 sidered an indebtedness of the State.

1 This sentence corrects a number of weaknesses
2 in Section 34 as it now stands. If you will look at the
3 two sentences -- if you will look at Section 34, you will
4 see it says, No debt shall be hereinafter contracted by
5 the General Assembly, unless such debt shall be authorized
6 by law, providing for the collection of an annual tax or
7 taxes sufficient to pay the interest on such debt as it
8 falls due, and also to discharge the principal thereof
9 within fifteen years from the time of contracting the
10 same. The taxes levied for this purpose shall not be re-
11 pealed or applied to any other object until the said debt
12 and interest thereon shall have been fully discharged.

13 That that I just read has been, and it is
14 recommended to be, superseded by the language in V.

15 The problem stems from the sentence in the
16 present Constitution, revolving around two concepts, one a
17 practical one, and one a legal one. The legal one is in-
18 volved in the use of the word, debt, because that word
19 has given birth to probably more litigation than any other
20 single word in this particular Section, and just recently,
21 in the last term of the Court of Appeals, there were no

1 fewer than four cases which went to the court by bond
2 attorneys seeking to have the word, debt, defined.

3 Without going into the layman's language, those
4 who are not working in this field can wonder with some
5 degree of justifiable amazement, I think, why this
6 should be the case, but nevertheless it is the case, and
7 it stems from an old precedent called Baltimore versis
8 Gill, in which the Court of Appeals held that the City, in
9 seeking to hypothecate stock, that is to say, pledging
10 stock that it owned to secure the indebtedness of
11 another entity, by pledging its own property, was thereby
12 creating a debt, and therefore that the act of pledging
13 was invalid within Section 34, so ever since that time,
14 whenever we have had a situation in which bonds are to
15 be issued, the question always comes up in bond attorneys'
16 minds as to whether or not you are creating a debt, be-
17 cause if you are creating a debt, then you are creating
18 what is known as a Section 34 debt, and all of the other
19 provisions of Section 34 have to be followed, the principal
20 one being, or the principal ones being first, that you
21 must have a tax which will support that debt, and secondly,

1 that the debt has to be paid off in fifteen years, witness
2 two cases in point: A school wishes to build a dormitory.
3 It gets the Legislature to say, in effect, that the bonds
4 which will be floated to provide the funds for that dor-
5 mitory can be serviced by rents or fees charged for the
6 use of that dormitory, and by existing fees or rents
7 charged for the use of a dormitory in existence. The
8 question is whether or not the State can take existing
9 fees, revenues from an existing structure, which might
10 otherwise go into general funds, pledge them to the use
11 of the bond service requirements to build the new dormitory.
12 Is this a debt within the meaning of the Section. The
13 Court of Appeals recently rules that it was not, and
14 that bonds could be issued for longer than a period of
15 fifteen years, and that there need not be a special tax
16 to service that particular issue of securities.

17 Example number two: The Maryland Port Authority
18 last year sought to, and is now going to build a center
19 in the City of Baltimore. It got authority from the
20 Legislature to float bonds to be serviced solely from
21 revenues to be generated by the center. The question was

1 that there might be enough revenues thrown off by the
2 center originally to pay for the debt service require-
3 ments on the bonds, and therefore investment bankers
4 advised the Port Authority that it would have to place
5 a substantial amount of its existing cash with an
6 independent trustee to secure the ultimate payment of the
7 bonds. A million dollars was the figure suggested.
8 The bond counsel questioned this because it looked like
9 this was something in the nature of a hypothecation of
10 the stock that Baltimore City had done years ago in the
11 Gill case, which was found to be invalid, so down to
12 Annapolis we had to go to get an answer to this, and the
13 Court of Appeals said, after hearing argument and almost
14 reargument, that this was not the creation of a debt
15 and that the Port Authority could be ahead.

16 Well, these two illustrations serve to
17 demonstrate that the word, debt, in the context that is
18 found in Section 34, is a hard word to get around.

19 The practical objection to the first sentence
20 in Section 34 relates to the requirement that a specific
21 tax be used, or pledged to service the bond issue. It

1 has been traditional in Maryland, with but two exceptions,
2 that the real estate tax is the tax which is used to
3 service State indebtedness, and that is all it is used
4 for, so that the State tax which you now pay is determined
5 strictly by the amount of bond service requirement that
6 the annuity bond fund requires in any given year.

7 This has two, or this generates two problems.
8 One is that you have got to tack on a tax, usually the
9 real estate tax on every bond issue, and secondly, it
10 prevents, and if this is continued, would prevent the
11 elimination at the State level of the real estate tax,
12 which is thought by most modern physical thinkers to be a
13 good thing. It is generally believed, Cooper-Hughes
14 was the latest, but certainly by no means the only report
15 which recommended to the people that real estate tax be
16 reserved entirely for the local political subdivisions.

17 This is currently impossible, although
18 technically this can be subverted, but actually until the
19 bond issues which are now in existence, which are being
20 serviced by real estate tax, there has to be a real
21 estate tax available to service these bonds.

1 In lieu of these procedures our Committee
2 has recommended that the indebtedness, instead of being
3 secured by a given tax, shall be secured by an irrevocable,
4 and here again we come to words of art, which are known to
5 bond dealers and attorneys throughout the country,
6 irrevocable pledge of the full faith and credit and un-
7 limited taxing power of the State, and as I say, these
8 are words of art, and the second clause, again, unless
9 the act of the General Assembly purporting to authorize
10 the creation of such indebtedness includes such an ir-
11 revocable pledge, the obligation so authorized shall not be
12 considered an indebtedness of the State; which means
13 that unless the Legislature in effect pledges the full
14 faith and credit, then the obligations which are to be
15 incurred are not to be considered debts of the State
16 and are not controlled by this particular Section.

17 DR. BARD: Do you want us to interrupt you, sir,
18 as you go along?

19 MR. CASE: What did you say?

20 DR. BARD: Shall we interrupt as you go?

21 THE CHAIRMAN: I think it would be better to

1 go through the whole and then come back and take it up
2 sentence by sentence.

3 MR. CASE: The next sentence says, beginning
4 at Line 8, If at any time the General Assembly shall fail
5 to appropriate sufficient funds to provide for the timely
6 payment of the interest upon an installment of principal
7 indebtedness created on behalf of the State as provided
8 in this Section, the Comptroller shall set apart from the
9 first revenues thereafter received applicable to the
10 general funds of the State a sum sufficient to pay such
11 interest and installments of principal.

12 This is a new, completely new provision in-
13 serted into the Constitution, but one which we strongly
14 recommend. This sentence is found in the New York State
15 Constitution and is considered by investment banking
16 people and by Moody's Investment Service as a cornerstone
17 of strong meaningful credit of a State entity.

18 It says, in effect, that even though the State
19 agrees to pledge its full faith and credit in unlimited
20 taxing power, just to make sure, just to make sure that
21 this is carried out, the Comptroller is directed to pick

1 out of the first tax receipts that are undedicated, that
2 is to say, not dedicated funds, enough to pay the principal
3 and interest of all outstanding bond issues, and I can't
4 emphasize too strongly how this point has been stressed
5 to the Committee and based upon my own experience in this
6 field, how, or what an improvement I think this would
7 be over the existing Constitution.

8 The next sentence says, All State indebtedness
9 shall mature within twenty-five years from the time
10 when such indebtedness is incurred.

11 I previously read to you a sentence which put
12 a limit of fifteen years on bonds that can be issued by
13 the State, and this fifteen-year period has been with
14 us since 1851. It today has no meaningful relationship
15 to modern financial practices. Generally speaking, any
16 capital asset which is constructed by funds produced
17 by the sale of bonds will be an asset which will last
18 more than twenty-five years, and generally speaking,
19 bonds, the maturity of bonds, all of which are serials,
20 if everybody understands what I mean, that is, they come
21 due each year over a period of years, but the modern day

1 trend is to sell bonds from twenty to twenty-five years.
2 Well, this provision doesn't say they have to be twenty-
3 five years. It merely says that they can run out that
4 far if the fiscal people think that they ought to go that
5 far.

6 The fifteen-year period also has the effect
7 of bunching bond service requirements over a shorter
8 period of time and to that extent, accentuating the
9 impact of the taxes that are necessary to pay the debt
10 off.

11 We got the advice again of Moody's on this
12 precise question because in years past, it was the cry of
13 some of the State fiscal people, particularly the last
14 Mr. Hooper Miles, who was Treasurer of this State for many
15 years and who I had many conversations with about State
16 borrowing when I served in the Attorney General's Office
17 and doing the tax and fiscal work for the State, who
18 felt very strongly that the fifteen-year period, the fif-
19 teen-year limitation was a meaningful and necessary thing.
20 With all due respect to him and to his memory, we find
21 that this is not the case, and that the fifteen-year period

1 can easily be extended to twenty-five without any serious --
2 without any effect on the State's credit rating. This
3 being true, it is our best judgment that twenty-five years
4 gives more flexibility to the fiscal management of the
5 State than does the fifteen years and is a desirable
6 change.

7 The last sentence has been suggested in the
8 alternative. John, I don't know whether everybody has the
9 second sheet.

10 THE CHAIRMAN: That is Page G.

11 MR. BROOKS: That is attached to the Legislative
12 Report.

13 MR. CASE: I took mine off and lost it. They
14 won't know what I am talking about, and neither will I,
15 as far as the last sentence is concerned.

16 THE CHAIRMAN: It is Page G, headed Proposed
17 Substitute for Article III, Section 34. It was originally
18 attached to the Legislative Department Report, and we
19 suggested yesterday you tear it off.

20 MR. CASE: The fact that page was attached
21 to another Report is not to be taken as indicative of the

1 other fact that our Committee poked its nose into other
2 Committees' business.

3 Reading from Line 16, and I will read from
4 B, because it is B which has the Committee's recommenda-
5 tion, although G, which is the one you have torn off
6 the other Report is something that was brought to our
7 attention because two Members of our Committee, while not
8 feeling overly strong about it, would like to have it
9 discussed as a matter of policy, and I will state the
10 problem, and then we can discuss it, but the broad out-
11 line of this is as follows:

12 The Section says, The assets or credit of the
13 State shall not in any manner be given or loaned to any
14 individual, association, or corporation unless a public
15 purpose will be served thereby and unless authorized
16 by an act of the General Assembly stating such public
17 purpose.

18 Let's think in terms of the philosophy of that
19 sentence rather than its precise terms, and as you are
20 thinking about it, I shall read to you the Section in the
21 existing 34 which deals with the same subject, and it says,

1 beginning on Line 7, The credit of the State shall not
2 in any manner be given or loaned to or in aid of any
3 individual, association or corporation, nor shall the
4 General Assembly have the power in any mode to involve
5 the State in the construction of, et cetera.

6 I will come back to that.

7 Now, the credit clause, the credit has also
8 been a troublesome, a very troublesome Section, as far
9 as bond attorneys are concerned. It says, The credit of
10 the State shall not in any manner be given or loaned
11 to or in aid of any individual or association or corpora-
12 tion, and the question is what is meant by credit, and
13 does this word have any other meaning than debt, and if
14 so, what is it. An example: Some years ago in Governor
15 McKeldin's administration, it was thought desirable for
16 the State to make available to the Hopkins a substantial
17 sum of money in aid of building, in the Engineering
18 Building. An act was therefore passed authorizing the
19 issuance of bonds, and the idea being that the proceeds
20 of those bonds would be given to the Hopkins. Hopkins is
21 not a part of the State, in the sense that it is part of

1 the State government, and bond counsel said, I don't
2 think this can be done because what we are doing here is
3 using the State's credit in aid of a private institution,
4 and this Section 34 says that you can't do that, and very
5 frankly, it looked like a pretty good case, because the
6 Hopkins is a private institution, the State's credit
7 was going to be used, they were going out to borrow this
8 money and turn the cash over to it, and it would seem
9 that the taxpayer had a pretty cold case, but as often
10 happens in the Court of Appeals in Maryland, as in other
11 courts, and the Supreme Court of the United States, the
12 result to be reached was more important than the technical
13 arguments that were advanced by able counsel, and the
14 Court said, Well, this is not credit that you are doing
15 here, this is cash. You are giving cash. True, you are
16 using your credit to get the cash, but by the time you
17 have your transaction with the Hopkins, you are giving
18 cash and cash is not credit, so it is perfectly all right.

19 A progenitor of that decision was one which
20 came up in a little town of Frostburg, in Western Maryland,
21 which was a depressed area at the time, and probably

1 still is to some extent, because it is in Appalachia,
2 and the town fathers up there decided that they might
3 possibly induce a garment factory to locate there if
4 they could sell bonds and turn the money over to, or build
5 a building and rent the building to the garment factory,
6 and an act was passed by the General Assembly to allow
7 this to be done, and a taxpayer filed suit against the
8 procedure on the theory that, My God, you are taking the
9 credit of the County, and here we are dealing with the
10 County, but there is a provision in the Constitution
11 dealing with counties, which is fairly similar to 34, and
12 the beneficiary of this benevolence is going to be a
13 private corporation, namely the garment factory, and how
14 in the world can you justify this.

15 Well, the Court of Appeals hemmed and hawed
16 about that for a while, and over the rather vigorous
17 dissent of the most recent chief judge, said, without
18 really talking about the word credit too much, that if
19 there was a public purpose to be served by the use of
20 these funds, which really inured to the benefit of the
21 population, who were going to pay the taxes to pay off the

1 bonds, and if their representatives felt that this was
2 a desirable thing, then there was no depreciation of proper-
3 ty without due process of law in this case, and it
4 met the constitutional test, both in the Maryland
5 Declaration of Rights and the Fourteenth Amendment to the
6 Federal Constitution, so that we have, therefore, a line
7 of authority in this State, and there is a much more
8 distinct line of authority throughout the country, that
9 public credit can be used to further the public good,
10 if it can be shown that a public purpose is served there-
11 by.

12 One other illustration might be useful here.
13 In many parts of the country, including Maryland, we
14 have what is known as urban renewal projects. Some of
15 these urban renewal projects have to do with industrial
16 development. To finance these projects, it has been
17 customary to permit the local political subdivisions to
18 form nonprofit corporations, the object of which or the
19 purposes of which would be to clear land, buy buildings,
20 clear land and make properties available for industrial
21 expansion.

1 These projects are geared to areas where un-
2 employment is high so that plants can be brought into
3 these areas and employment is given. Traditionally,
4 States have been allowed to guarantee these obligations
5 and against attack by taxpayers that this is a loaning
6 of the State's credit to the private corporation, which
7 will ultimately build the factory.

8 The courts throughout the country in a great
9 number of cases have held that so long as the public
10 purpose has been served, the credit of the State can be
11 used in this way.

12 There is a great deal of question in the minds
13 of the Committee as to whether these worthwhile projects
14 and projects of modern financing technique can be
15 utilized in Maryland; perfectly obviously they can't be
16 utilized without a long series of litigation, so what
17 the Committee has sought to do is to say that the assets
18 or credit of the State cannot in any manner be given to
19 any individual, et cetera, using the same language, but
20 putting in there the test of public purpose, and also
21 requiring the act of the Legislature which will do this

1 particular thing to state on its face what the public
2 purpose is, so that all will know and so that it can be
3 brought to the courts if it is necessary to bring it to the
4 courts, and permit the courts to pass a judgment on that
5 question.

6 The business that has been added on G indicates
7 that another test, or another safeguard should be hung on
8 the use of the State's credit, and that is that it should
9 not, or gift of the State's assets, which is not meaning-
10 ful and the brackets indicate in my draft that I handed
11 Mr. Brooks that I wanted that struck out, of State assets
12 doesn't belong in here because you can't give assets for
13 twenty-five years, but what it purports to say is that
14 the State's credit if given for a public purpose should
15 not be extended for a period more than twenty-five years
16 so that in the example I give, it would limit the bond
17 issue which could be guaranteed to twenty-five years issue.
18 That is the same as the State bond issue itself could be.
19 I will come back to the pros and cons of that in a minute,
20 because I now want to turn to the balance of Section 34,
21 existing Section 34, and tell you what has happened to it,

1 or should I more precisely say why what has happened to
2 it has happened, because what has happened to it is that
3 it has been deposited gently but firmly in File 13.

4 Starting off with Line 9, because all of the
5 rest of it has been eliminated, the Section says, Nor
6 shall the General Assembly have the power in any mode to to
7 involve the State in the construction of works of internal
8 improvement nor in granting any aid thereto which shall
9 involve the faith and credit of the State.

10 This has been eliminated, because the words,
11 works of internal improvement, have been held to be words
12 of art. They mean turnpikes, canals, railroads. These
13 are beautiful words, I wish to emphasize this, they are
14 great words, but unfortunately they have long since lost
15 their meaning in the context of the financial community.

16 Line 12: Nor make any appropriation therefor,
17 except in the aid of construction of works and internal
18 improvement in the counties of St. Mary's, Charles
19 and Calvert, which have had no direct advantage from such
20 works as have been heretofore aided by the State, and this,
21 as I said earlier, stems from the historical fact and now

1 an anachronism that these three southern counties were not
2 blessed by the B&O Railroad and it was tacked on in a
3 later draft, and it was thought that maybe you could come
4 back with works of internal improvement in these three
5 counties, which is a lot of hogwash.

6 MR. MILLER: Are slot machines included?

7 MR. CASE: I don't know whether they are an
8 improvement or not. They sure are internal, and infernal I
9 might say, and providing that such aid, advances or
10 appropriations shall not exceed in aggregate sum \$500,000.
11 That deals with Calvert County, et cetera. That is all
12 eliminated as being completely passe.

13 Line 17: And they shall not use or appropriate
14 the proceeds of the internal improvement companies or the
15 State tax now levied or which may hereafter be levied to
16 pay off the public debt or to any other purpose until the
17 interest and debt are fully paid, or the sinking fund
18 shall be equal to the amount of the outstanding debt,
19 which goes back to the historical genesis of all of this
20 which I told you about, which the framers in '51 wanted
21 to make it absolutely certain that the yield from the

1 securities earned would go to pay this debt, and the
2 taxes would be used to pay it, and the sinking fund
3 would be held inviolate for this purpose, but this has
4 long since passed away, and it is completely meaningless
5 today. Semicolon, but the General Assembly may authorize
6 the Board of Public Works to direct the State Treasury
7 to borrow in the name of the State and in anticipation
8 of the collection of taxes such sum or sums as may be
9 necessary to meet temporary deficiencies in the Treasury,
10 to preserve the best interests of the State in the con-
11 duct of the various State institutions, departments,
12 bureaus and agencies during each fiscal year.

13 Now, this was a later amendment, and is known
14 by a technical phrase of tax anticipation borrowing, and
15 this is engaged in by a great many political entities.
16 I don't think it has ever been engaged in by the State,
17 although I could be wrong about that, at least not in my
18 experience. It has been by certain cities and counties
19 of this State, and it permits the local political sub-
20 divisions or the State, as the case may be, to borrow
21 money in anticipation of tax revenues, and then the taxes

1 come in and the indebtedness is paid off, and this is a
2 useful tool, equally as useful as another fiscal technique,
3 which is known as bond anticipation financing. Bond
4 anticipation financing is being used today, as a matter
5 of fact, in quite a prevalent way because as many of you
6 know, interest rates today are at all time highs, and
7 a lot of the communities are reluctant to commit their
8 governments to a long term borrowing at these high interest
9 rates, so to get away from this, what they are doing is
10 borrowing short term in anticipation of permanent finan-
11 cing, and we call this bond anticipation financing, and
12 there is no provision in the existing Maryland Constitution
13 to do this. Both tax anticipation borrowing and bond
14 anticipation borrowing are covered in the new draft in
15 the first sentence, where it says, That the State shall
16 have the power to incur indebtedness for any public pur-
17 poses. Those words, in and of themselves, are sufficient
18 to cover first permanent financing, second, bond anticipa-
19 tion financing, third, tax anticipation financing. That
20 being true, the sentence in old 34 that I read a few
21 moments ago will be eliminated; beginning at Line 27,

1 subject to the approval of the Board of Public Works and
2 as provided by law, the State Treasury is authorized
3 to make and sell short term -- well, temporary emergen-
4 cies, but such notice must only be made to provide for
5 appropriations already made by the General Assembly.

6 Emergency financing, through the borrowing
7 technique, was something that was used in the depression.
8 It is not used today, as far as I know, because nothing
9 is that big an emergency. As a matter of fact, the last
10 time it was tried in Baltimore City, it was tried, and
11 the City constitutional provision dealing with that has
12 a provision similar to this, but the situation was down
13 in South Baltimore, an old-time, it must have been pretty
14 old, sewer main broke, and the result of that was that the
15 sewage was running down the gutter in this area, and
16 the City Council sought to issue a series of notes
17 because this was an emergency, to clean this mess up, and
18 a taxpayer filed a suit, and the Court of Appeals said,
19 Of course, everybody knows, there is no emergency here
20 because that has been an old sewer line for years, and
21 everybody has known it, and you could have fixed it up if

1 you wanted to, so you have to go back the usual way, and
2 it is just not an emergency so what is an emergency, and
3 what isn't an emergency as far as borrowing is concerned
4 does bring forth and can bring forth various shades of
5 views, but whether it is or isn't, it is covered again
6 by the first sentence, which deals in a general way with
7 all types of borrowing.

8 Continuing, Section 31: The General Assembly
9 may contract debts any amount that may be necessary for
10 the defense of the State, again covered by Lines 1 and 2
11 of the proposed draft. As you can see, as we go through
12 this, Lines 1 and 2 take care of about 16 lines of the
13 present Constitution, and although again I reiterate
14 I hate to see such apparently plain sort of words, do all
15 this work, and take the place of something that has been
16 with us for a long time, I must confess that I think it
17 is the proper thing to do in this case.

18 Now, continuing, And provided further that nothing
19 in this Section shall be construed to prohibit the raising
20 of funds for the providing of aiding or compensating in
21 such manner or in such way as the General Assembly of

1 the State shall deem proper those citizens of the State
2 who have served with honor their country and State in
3 time of war; provided, however, that such action of the
4 General Assembly shall be effected only when submitted
5 to and approved by a vote of the people of the State at
6 the general election next following the enactment of
7 such legislation, a provision which was inserted to
8 grant a bonus for the soldiers of World War I, which
9 I assume got the benefit, the political mileage was
10 gotten out of it by the sponsors of this particular Sec-
11 tion, but happily no bonds were ever issued by the State
12 to take care of the situation. If soldiers' bonuses are,
13 and I am not now suggesting that they are or may be or
14 are not or may not be a public purpose, then under the
15 proposed Committee's draft, this would be permissible.
16 There is no need for this language, and it is therefore,
17 its elimination is therefore suggested.

18 That, Mr. Chairman, is a somewhat long-winded
19 explanation of new Section 34.

20 THE CHAIRMAN: I think we might go back now
21 and take up the consideration of the Section sentence by

1 sentence. Mr. Gentry?

2 MR. GENTRY: The second sentence.

3 THE CHAIRMAN: Let's take first the first
4 sentence. I am reading from Page B, and giving the lines.
5 They may vary somewhat from Page G. This is the first
6 two and a half of the third line: The State shall have
7 the power to incur indebtedness for any public purpose
8 in such manner and upon such terms and conditions as the
9 General Assembly prescribe. Mr. Miller?

10 MR. MILLER: A comment by one of our good
11 advisors, that I will pass on. Would it be better to say
12 the General Assembly rather than the State? The State
13 is sort of a catchall phrase.

14 MR. CASE: The General Assembly is not the
15 borrowing agency. It is the State, and it is the State's
16 credit which we are talking about here, so I think it
17 would be inappropriate to say that.

18 MR. MILLER: Is there anybody else could borrow
19 money besides the General Assembly? I am seeking
20 clarification.

21 MR. CASE: Can anybody else borrow money?

1 MR. MILLER: Is there any agency that would
2 be affected by this act? Would the Treasury or some-
3 body else be able to borrow?

4 MR. CASE: If it is a State indebtedness,
5 only the State will do it. The mechanics of it, of how
6 the issue comes to market, if that is what you are talk-
7 ing about, is covered by the words, in such manner and
8 upon such terms and conditions as the General Assembly
9 may prescribe.

10 Ofttimes in basic documents, and by that I
11 mean Constitutions, you will find rather lengthy state-
12 ments of whether the bond, or how the bonds shall be
13 set, whether they shall be maturity or term, that they
14 shall be dated, that they shall be signed, facsimile
15 signatures are proper, seals shall be attached, et cetera.
16 We have not chosen to use that method here, but merely
17 permit the General Assembly in its wisdom to set the
18 mechanics of borrowing.

19 THE CHAIRMAN: I think Mr. Miller's question,
20 Mr. Case, was whether or not this sentence authorizing the
21 State to borrow would confer authority on any other State

1 official, such as the Treasurer or the Comptroller or
2 the Governor to borrow for the State.

3 MR. MILLER: I have no quarrel with these words.
4 I was merely asking a question. I am not trying to amend
5 it, but I wanted to make sure.

6 MR. CASE: It would not.

7 DR. WINSLOW: May I say that I prompted this
8 question, remembering that in the United States Constitu-
9 tion, for instance, a similar power is to be found in
10 Article I, Section 8, which says that the Congress may
11 borrow money, rather than saying the United States shall
12 have power to borrow money. I would assume, sir, that the
13 State has power to borrow money, even if there were no
14 such Article as this in here. This is intended, I
15 should think to put upon the General Assembly the power
16 to incur indebtedness in the name of the State.

17 MR. CASE: I think it is academic, because the
18 State shall have the power, assuming that that is declara-
19 tory, the inherent power as a necessary declaration.

20 THE CHAIRMAN: It goes further and says that
21 the State has the power to borrow in such manner and such

1 terms as the General Assembly prescribed.

2 MR. CASE: The General Assembly puts the
3 thing in motion.

4 DR. BURDETTE: I have two comments that I
5 should like to be enlightened about, if I may. The first,
6 exactly the one that Dr. Winslow has brought up, and
7 I remind the Chairman of the Committee that he himself
8 was speaking yesterday about the constitutional theory
9 that the State Constitution, as I understood him, has a
10 limitation on powers, not a grant of powers because the
11 State has all the power except as it may be limited. I
12 would say I am somewhat unhappy about saying in the Con-
13 stitution that the State has power to incur indebtedness
14 when it certainly does; while the former Constitution
15 specifies, and I gather the Chairman of the Committee
16 thinks it is inadequate, 34, no debt shall hereinafter
17 be contracted by the General Assembly.

18 I would say, Mr. Chairman, we have gotten a
19 situation whereby we have made it perfectly clear, and
20 this is an improvement, that only the General Assembly
21 can authorize indebtedness, but by doing that, our language

1 has gotten us into being a bit sententious.

2 It may be only acedemic, but I wish we could
3 improve it.

4 MR. CASE: Bankers don't share that view.

5 DR. BURDETTE: They do not share the view that
6 the State has the power to tax, or have the power to
7 borrow inherent?

8 MR. CASE: They don't share the view that this
9 language is unfortunate.

10 DR. BURDETTE: Well, the complaint I have is
11 that it is necessary for the Constitution to give the
12 State power to incur indebtedness. This is a switch of
13 theory, but I don't want to belabor this, but another
14 one I would like to ask about, why is it that we should
15 not have in this sentence in some fashion the meaning
16 which the Chairman has elucidated that this public purpose,
17 when a loan is given in the public interest to associations,
18 corporations, should be spelled out, why should that not
19 be spelled out in this case for the very same purposes
20 that the Chairman gave? That is that all should know, I
21 believe were his words, what the public purpose is in the

1 minds of the enactors and those all, I should think, would
2 be the courts in evaluating whether or not it is a public
3 purpose, and the public, in understanding what the intent
4 of the General Assembly may have been.

5 MR. CASE: The answer to that is, of course,
6 that the Section does provide that in these acts, the
7 legislation must state the public purpose. Now, it
8 may state it in a stereotyped cookbook fashion, but it
9 has to be stated. By that I mean in order to alleviate
10 unemployment in such and such a place, the General Assembly
11 finds it in the public interest to incur debt, et cetera.
12 This required that.

13 DR. BURDETTE: Mr. Chairman, I am wondering if
14 it does. This is exactly what I am trying to get into.
15 You see, it does in the last sentence with respect to
16 lending the credit of the State to some agency, but it
17 would seem to me that the very language that you suggested,
18 sir, might be left out of the statute and then the courts
19 would be put upon the problem of finding what the purpose
20 was.

21 I grant you, sir, that the Legislature in fore-

1 sight would put those words in anyhow, but I see nothing
2 in the first sentence which required them to put in such
3 words.

4 MR. CASE: You conceivably have a point there.
5 There would be no objection as far as I am concerned in
6 including those words, although I think it would be a
7 redundancy because the thing the Section, the last sen-
8 tence, probably does require this; but the thing about it
9 is, Dr. Burdette, that you overlook, is a substantive
10 point, and that is that no matter what the General
11 Assembly says, these are just so many words. They are
12 necessary words, but they are just so many words, until
13 if they are challenged and a decision is made by the
14 court. In all of the cases throughout the country, this
15 has been stated to be true.

16 We have a doctrine of legislative finality
17 in certain areas, but in this area the existence of a
18 public purpose as such has to be determined in the last
19 analysis by the Court.

20 DR. BURDETTE: Exactly.

21 MR. CASE: And the Court does this on the due

1 process approach. We feel that this is the meaningful
2 way to test this, and this is what the law of the State
3 should be.

4 DR. BURDETTE: I don't mean to belabor this,
5 but I would like to press the point a bit that if the
6 court could have the benefit of what the General Assembly
7 thought the purpose was, we would be better off. I think
8 the public would be better off. I remember a case in the
9 Kentucky highest court in which it held that, as I recall
10 my very small legal training, that a statute was not a
11 public purpose, but I had a feeling in reading the case
12 that, this is a commemorative statute to a war hero. If
13 the Legislature had spelled out where it was public pur-
14 pose, it might have got through the courts, but I think
15 there is another point beyond the lawyers' point, sir, that
16 the General Assembly should really be required to put
17 the cards on the table of what it thinks it is doing.
18 I concede it may be obscure in its language at times, but
19 still some language ought to be used.

20 MR. CASE: I am not going to debate it. I
21 don't think it is necessary, not when you are incurring

1 indebtedness. It is necessary when you are lending credit,
2 which is much more nebulous, but when you are authorizing
3 bonds to be sold for a certain purpose, it has to say what
4 the purpose is. You just don't borrow ten million dollars,
5 period. You borrow ten million dollars to build a fine
6 arts building at the University of Maryland.

7 DR. BURDETTE: I am not sure that the Legis-
8 lature would have to do it that way. I would like to be
9 sure that we say it does.

10 MR. CASE: I don't think anybody in the world
11 would suggest that an act which would say the State shall
12 borrow ten million dollars, period, would be a valid law.
13 It has to say what it is for.

14 THE CHAIRMAN: Mr. Sayre?

15 MR. SAYRE: The word distinctly specified, I
16 think, would cover a valid point of Dr. Burdette, and it
17 was suggested in the model Constitution, and you are
18 after the specific objects of the indebtedness, isn't that
19 right, Dr. Burdette?

20 DR. BURDETTE: I don't recall the model.
21 That is the idea.

1 MR. SAYRE: If you simply inserted, to incur
2 indebtedness for any specified, distinctly specified
3 public purpose, would that not cover the point?

4 DR. BURDETTE: That is acceptable to me. I
5 would want it defined by someone like the Chairman of
6 the Committee, who is a real authority on financial
7 practices, as I am not.

8 MR. CASE: I don't think you could get more
9 specific than that.

10 DR. BURDETTE: I am thinking of the public
11 relations point, Mr. Chairman.

12 THE CHAIRMAN: May I ask a question at this
13 point? I would be a little concerned that the addition
14 of such language might create a situation where counsel
15 would be picking at all of the little flaws that you could
16 conceivably find in the statute stating the purpose, and
17 I would wonder and I would like the Chairman of the Com-
18 mittee to comment on this, whether a provision in the
19 Constitution which required that the act authorizing the
20 bond issues state the public purpose would limit the
21 court to the public purposes so stated.

1 MR. CASE: I am sorry, Mr. Chairman.

2 THE CHAIRMAN: Do you think if any language
3 were added which required that the Legislature state
4 the public purpose in the statute, and this were questioned
5 in litigation, that the court would say it is limited
6 to the public purpose stated, and if it concluded that
7 the purpose stated was not a proper public purpose but
8 there was another public purpose, it couldn't go to the
9 other public purpose.

10 MR. CASE: That is entirely possible. I can
11 think of an illustration where that might be true in the
12 credit field. It is inconceivable to me that indebtedness
13 which states the object of the borrowing wouldn't qualify
14 or wouldn't have enough on the record so you would know
15 whether it would qualify or not, but I think if you try
16 to become more specific in the Constitution requiring
17 something like this, you are going to breed more litigation
18 like we have had under 34 from time immemorial.

19 THE CHAIRMAN: Mr. Miller?

20 MR. MILLER: Getting back to the point that
21 Dr. Winslow was discussing, if it is conceded that the
State as a matter of principle has all rights to borrow,

1 et cetera, would it hurt if this sentence was set up in
2 a way to say that the General Assembly or the State
3 cannot borrow money, except for a public use?

4 MR. CASE: Let me say this about that, Congress-
5 man: The present unworkable Section 34 is written in the
6 negative. This Section is written in the affirmative.
7 We think it is a better approach. It is a matter of
8 style, and it is a question of approach. We think the
9 affirmative approach, what it can rather than what it
10 cannot do is best.

11 MR. MILLER: What apparently concerns our good
12 professors is it is just stating a truism and not a
13 limitation.

14 MR. CASE: It is a limitation, as you read it
15 in context, but it states it in an affirmative rather than
16 a negative way. You see, you have got to think in terms
17 of the history, as I tried to describe it. The State
18 borrowed money originally without any provision in the
19 Constitution. The Constitution of 1776 had nothing in it
20 about money. You went ahead and borrowed and turned the
21 bonds over to the railroads and canals, so that based on

1 that context, in that context and in that setting
2 Section 34 came along to prevent that type of thing. Now,
3 we have gotten into a much more sophisticated time and
4 people who are interested in the State and who want to
5 know what the basic requirements are look at a piece of
6 paper, namely the Constitution. If they look at this,
7 which I hold in my hand, which is old 34, it means nothing
8 but a bunch of hogwash. The Section we are suggesting
9 is a meaningful, clearcut draft of powers.

10 THE CHAIRMAN: Mr. Sykes?

11 MR. SYKES: Mr. Chairman, I am concerned with
12 the point Dr. Winslow and Congressman Miller raise.
13 One problem with the language as it is suggested is that
14 there is no restrictive word, like only in it, even if you
15 accept the affirmative method of statement, and I would
16 think that it should read at the veryleast that the State
17 shall have power to incur indebtedness only for public
18 purpose and in such manner and upon such terms, et cetera,
19 as the General Assembly may direct.

20 MR. CASE: That wouldn't add anything. It says,
21 for any public purpose. If it is for any public purpose,

1 it can't be for anything but a public purpose.

2 MR. SYKES: I don't think so. I think the
3 problem is that you have got this problem of the plenary
4 power of the Legislature in the State, even in the absence
5 of any express statement here, or at least the possibility,
6 and I would think also that because of this problem of
7 plenary State powers, the negative form of expression
8 which would imply the recognition of those powers, and
9 the use of the word except, which would definitely limit
10 the Section to the positive results that the Committee
11 wants to achieve would be the best method of drafting,
12 and in order to make progress and bring the thing before
13 the floor, I would move that the first sentence of the
14 draft be amended to read as follows: The State shall
15 incur indebtedness, except for a public purpose and in
16 such manner and upon such terms and conditions as the
17 General Assembly may prescribe.

18 THE CHAIRMAN: Is there a second?

19 MR. MILLER: I will second that.

20 THE CHAIRMAN: Any discussion?

21 MR. MARTINEAU: Mr. Chairman, I would like to

1 suggest to Mr. Sykes that he consider also including
2 in that amendment the point that was raised by Congress-
3 man Miller and Dr. Winslow, that it be phrased in much
4 the same language as the last sentence, that it be only
5 by act of the General Assembly. I must say that although
6 there is an implication in the second sentence here, or
7 in the third phrase, second sentence, that this can be
8 done only by act of the General Assembly, the first
9 sentence would seem to say the General Assembly can give
10 the power to anyone to create a State debt. I would
11 prefer to have it stated very explicitly that the State can
12 incur a public indebtedness only for a public purpose and
13 only by act of the General Assembly.

14 MR. SYKES: On that I would think that the
15 first sentence can get overcumbersome. I think it should
16 be limited to a statement of the general objects for
17 which the State debt can be created and the fact that
18 the General Assembly is the agency.

19 Now, in the mechanics, or in the later sentences
20 the mechanics are spelled out, and I wouldn't think that
21 the suggestion would be foreclosed as a matter of substance,

1 but as a matter of drafting I would prefer the first
2 sentence to be as I suggested it.

3 THE CHAIRMAN: Can you give me that language,
4 Mr. Sykes?

5 MR. SYKES: The State shall incur no indebted-
6 ness except for a public purpose and in such manner and
7 upon such terms and conditions as the General Assembly
8 may prescribe.

9 DR. BURDETTE: May I make a suggestion?

10 THE CHAIRMAN: Just a second, Dr. Burdette.
11 The phrase, shall incur no indebtedness, would you accept
12 shall not incur indebtedness?

13 DR. BURDETTE: My thought was, shall incur
14 indebtedness only. The first part of the sentence doesn't
15 go with the second, but this is a style matter, and it
16 will have to be a style matter.

17 THE CHAIRMAN: Do you accept the change,
18 Mr. Sykes?

19 MR. SYKES: I don't think it makes any differ-
20 ence.

21 THE CHAIRMAN: Just so we know what we are

1 talking about.

2 MR. SYKES: It is agreeable to me.

3 THE CHAIRMAN: What is the language?

4 MR. SYKES: That would now read, The State
5 shall incur indebtedness only for a public purpose and
6 in such manner.

7 THE CHAIRMAN: Mr. Case, do you want to com-
8 ment?

9 MR. CASE: Well, I think, I don't know whether
10 we are talking about words. I can't visualize that
11 this really does anything.

12 DR. BURDETTE: Does it hurt you any, sir?

13 MR. CASE: I don't know. What worries me is
14 when amateurs start fooling around with a professional
15 subject.

16 DR. BURDETTE: That is why I relied on you
17 for language.

18 MR. CASE: That is why I am asking you rely
19 on me, and that goes for Mr. Sykes, too.

20 MR. CLAGETT: What difference would there be
21 in the purport of language such as this, through the

1 General Assembly, and in such -- through the General
2 Assembly only, and in such manner and upon such terms
3 and conditions as it may prescribe, the State shall have
4 the power to incur indebtedness for any public purpose.

5 MR. CASE: In the first place, it is so cumber-
6 some, I don't understand it, and what we are trying to
7 do here is to, in the first sentence, to get a clear
8 concise statement that the State has the right to borrow.
9 Now you talk, Mr. Sykes and my good friend, the professor,
10 talk in terms of putting this in the negative. Let me
11 tell you why it is put in the affirmative. It is to
12 some extent a public relations reason, but I think you
13 have to think in terms of this kind of thing, this
14 document being used by somebody other than just this Com-
15 mission, and this Section will be used by bond attorneys
16 and bankers throughout the country in the determination
17 of what the State can do. Many States, many States in-
18 cluding Georgia, to some extent Pennsylvania, cannot
19 borrow and must finance their schools through authorities.
20 In Pennsylvania this is done, in Georgis this is done,
21 and when you go therefore to someplace like Moody's, and

1 talk about what your State can do, the first thing they
2 say to you is, Well, can your State borrow or do you
3 have to go through some authority to borrow like you do
4 down in Georgia and up in Pennsylvania? This is the
5 first thing they say to you.

6 The reason I wrote this this way is so that
7 when we go, whoever is bond counsel for the State and
8 the State Treasurer goes up to see Moody's and they say,
9 Where is your authority to incur general obligation
10 bonds, you turn to 34, and you say, Right there it says
11 the State shall have the power to incur indebtedness.
12 That means the State can do it, you don't have to go
13 through an authority to do it, et cetera. That was the
14 reason. It is declaratory. It is declaratory of the
15 existing law, but it is a necessary declaration in my
16 judgment.

17 MR. SYKES: If that is Mr. Case's concern,
18 then I think Professor Burdette's language was better
19 than the language I originally suggested and does do
20 exactly that, without implying any limitations on the
21 general residuary powers of the State, and expressly

1 limiting the State in a way that Mr. Case's Committee
2 seems to think is desirable. The State shall incur in-
3 debtedness only, et cetera, is a clear statement that
4 the State has power to incur the indebtedness and a clearer
5 statement of the intended limitation than even the Com-
6 mittee's own language.

7 JUDGE ADKINS: I would like to ask, Mr. Chair-
8 man, if there has ever been any attempt during the history
9 of the State of Maryland to borrow on this so-called
10 inherent power outside of the Article, Section 34, as it
11 previously existed. If not, it seems to me we are talk-
12 ing about something that^{is}/pretty ephemeral. Has there ever
13 been any attempt to exercise the general power of the
14 State to borrow outside of old Section 34?

15 MR. CASE: Before 1851.

16 JUDGE ADKINS: I mean since 34.

17 MR. CASE: No. This has been the restriction.

18 JUDGE ADKINS: Since 34, since Section 34 was
19 enacted in 1951.

20 MR. CASE: 1851.

21 JUDGE ADKINS: I know, 1851, it has been con-

1 sidered to be the only provisions under which the State
2 could borrow?

3 MR. CASE: Exactly.

4 MR. HARGROVE: Have we found under Section 34
5 any real difficulty in this State borrowing money, when
6 there was a definite limitation under 34? I thought
7 Mr. Case said from the beginning we had a Triple A
8 rating, which implies to me that the difficulty was
9 imposed under 34.

10 MR. CASE: Mr. Hargrove, when you talk about
11 difficulty, as I tried to indicate earlier, four cases
12 had to be taken to the Court of Appeals this year to
13 clarify various financing techniques that we tried to
14 do and, for example, it held up the Port Authority for
15 almost nine months, and while eventually we got the money,
16 I think that is difficult, yes.

17 MR. HARGROVE: I thought that was the question
18 of what a debt was. I was thinking in terms of the bond
19 attorneys dealing directly with a public purpose.

20 THE CHAIRMAN: Mr. Hargrove, I don't think
21 there is any doubt that in the past fifty years there have

1 been great difficulties encountered by the State and bond
2 attorneys in working out appropriate methods of carrying
3 out public purposes. Mr. Case has cited a number of them.
4 There are many others, I think.

5 Any further discussion?

6 MR. CLAGETT: Mr. Chairman, is there any
7 difference in the phrase, for a public purpose only, as
8 distinguished from the phrase, for any public purpose?

9 MR. CASE: Yes.

10 DR. BURDETTE: Yes, sir.

11 MR. CLAGETT: It seems to me there is, and it
12 seems to me that the language that we have here now is
13 broader than the language that has been suggested by way
14 of a mendment.

15 MR. CASE: Who is the author of that?

16 THE CHAIRMAN: It is Mr. Sykes' motion.

17 DR. BURDETTE: I suggested the words.

18 MR. CASE: I would like to know just what the
19 difference is.

20 DR. BURDETTE: The difference is this, as I
21 conceive it. My theory of constitutional law --

1 MR. CASE: The difference between only and any.

2 DR. BURDETTE: Any means that it can borrow for any
3 public purpose, but if there is an inherent power, as I
4 believe there is, it can also borrow for others if the
5 courts change their doctrines, and the courts may change
6 their doctrines, so that if we put in the language only
7 for a public purpose, then they can change it only within
8 the meaning they develop for public purpose, and they
9 have to justify it as a public purpose.

10 MR. CASE: You don't reach me, my friend. If
11 it says any public purpose, I don't think the State could
12 borrow for a private purpose. I don't believe the court
13 would go for that.

14 DR. BURDETTE: Not now, but I am not sure about
15 a hundred years from now.

16 MR. CASE: Let me tell you, the Committee as
17 far as I am concerned at least, I am not Committee, but I
18 did some work on it, wrote this to mean only or any, as
19 the case may be. In other words, it is limited, the
20 borrowing is limited to a public purpose.

21 DR. BURDETTE: That is what I want to achieve.

1 MR. CASE: I think that is what it does say. If
2 it doesn't, you may be a better word surgeon than I am.
3 This is what we are after.

4 THE CHAIRMAN: Mr. Haile?

5 MR. HAILE: Mr. Chairman, I too have had some
6 experience in financing for county governments, and the
7 language as presently written, in my judgment, carries with
8 it the concomitant idea that when you say the State has
9 power to borrow for any public purpose, that the court
10 would state clearly that they have no power to borrow for
11 any purpose which is other than a public purpose; and like-
12 wise, that nobody in the State or for the State, no one in
13 the Executive Department may borrow, except in such manner,
14 or except by act of the General Assembly, so I am convinced
15 that the present language is correct and proper.

16 THE CHAIRMAN: You think it has test-tubelike
17 clarity?

18 MR. HAILE: Yes, I do.

19 THE CHAIRMAN: Any further discussion?

20 MR. HAILE: Also it will facilitate marketing
21 of bonds, which is what we are concerned with.

1 THE CHAIRMAN: Mr. Sykes?

2 MR. SYKES: I am impressed by the fact that the
3 present language has been submitted to the banking com-
4 munity and to a great many others, which any change in
5 the language would not produce. I am also concerned that
6 there be an authoritative expression that the substance
7 of the present language is intended to reach the same re-
8 sult as the amendment, and if the Chairman of the Committee
9 would state for the record that his intention, the inten-
10 tion of the Committee in drafting the existing first
11 sentence is as Mr. Haile expressed it, then I would be
12 perfectly satisfied with that legislative history and
13 would not press the motion that I made.

14 MR. CASE: This is the case.

15 MR. SYKES: Okay.

16 MR. CASE: This is the case.

17 THE CHAIRMAN: Mr. Sykes?

18 MR. SYKES: I will withdraw the motion.

19 MR. MILLER: Mr. Chairman, I have great faith
20 and confidence in the Chairman of the Committee, and he
21 knows a great deal more about these things than I do, but

1 I still don't see why it is desirable to leave anything
2 to possible court interpretation, because in my experience
3 unfortunately, courts sometimes change their views. I
4 would like to offer as an amendment, and this does very
5 little change to the language; I would offer that the
6 General Assembly shall have the power to incur indebted-
7 ness only for any public purpose and in such manner, et
8 cetera.

9 That would at least get us on record on this
10 point, and I can't conceive that the financial bond
11 people would feel that we had greatly changed this. It
12 is still an affirmative statement. I agree with Mr. Case
13 it is desirable to have as much in the affirmative as
14 we can.

15 THE CHAIRMAN: Do you accept the amendment,
16 Mr. Sykes?

17 MR. CASE: He withdrew it.

18 MR. SYKES: I withdrew the motion.

19 THE CHAIRMAN: Has the secondary consented?

20 MR. MILLER: I was the secondary. I thought
21 he withdrew it.

1 MR. SYKES: This is a new motion.

2 THE CHAIRMAN: Would you state again what your
3 suggestion language is, Mr. Miller?

4 MR. MILLER: I would amend, and the language
5 is not entirely mine, thanks to my good advisor, here,
6 but the General Assembly shall have the power to incur
7 indebtedness only for public purpose -- for a public pur-
8 pose, and in such manner and upon such terms and conditions
9 as the General Assembly may prescribe.

10 THE CHAIRMAN: I would suggest to you that that
11 language puts you in exactly the dilemma that you had
12 initially. It looks like you are putting a limitation on
13 the General Assembly, not on anybody else. You don't say
14 that the State shall have.

15 MR. MILLER: Perhaps we started to change too
16 many words; the State shall have that.

17 THE CHAIRMAN: If you do that, you are back exact-
18 ly to the language that Mr. Sykes had suggested.

19 MR. MILLER: Am I?

20 THE CHAIRMAN: Yes, sir.

21 MR. MILLER: I will offer it if he doesn't want
to.

1 THE CHAIRMAN: You want the same motion, you
2 mean?

3 MR. MILLER: I will offer the motion as modified,
4 that the State shall have the power to incur indebtedness
5 only for a public purpose.

6 THE CHAIRMAN: That is slightly different from
7 his. He left out the words, have the power. He had,
8 The State shall incur indebtedness only for a public
9 purpose.

10 MR. MILLER: I prefer that.

11 THE CHAIRMAN: Is there a second?

12 DR. BARD: Second.

13 THE CHAIRMAN: Is there any further discussion
14 of that motion? Are you ready for the question?

15 MR. CLAGETT: Question.

16 THE CHAIRMAN: I would like to make a very
17 brief comment about this sentence, if I may, before you
18 vote.

19 I think this is an instance where we can per-
20 haps be too slavish in following the precept that if the
21 Constitution doesn't put a limitation, that the State has

1 the power. It seems to me that the sentence is stating
2 very succinctly, very clearly and very plainly what all of
3 us, and I don't think there is any disagreement on prin-
4 ciple, are trying to say. I think Mr. Haile has stated
5 it very well, and I don't believe we can improve it by
6 adding two words and taking out one phrase.

7 Any further discussion?

8 MR. CLAGETT: Question.

9 THE CHAIRMAN: Are you ready for the question?

10 All those in favor of the amendment, which deletes the
11 words, have the power, and inserts the words, only and
12 an, signify by a show of hands. Contrary. The motion
13 is lost, 2 to 16.

14 Any further discussion about the first sentence?

15 JUDGE ADKINS: This is a very minor point, but
16 hasn't our practice been to say that the General Assembly
17 may by law prescribe?

18 THE CHAIRMAN: Yes.

19 JUDGE ADKINS: Should not the words, by law,
20 be inserted between may and prescribe?

21 THE CHAIRMAN: The purpose of that, Mr. Case,

1 was to indicate that it is not a power of the General
2 Assembly that is independent of the veto? Do you concur?

3 MR. CASE: I would have no objection to that.

4 THE CHAIRMAN: Any objection? Then we would
5 add the words in the third line after, General Assembly,
6 the words, by law.

7 Any comment or question as to the second
8 sentence beginning in the third line, and concluding near
9 the end of the eighth line? Mr. Gentry?

10 MR. GENTRY: Just with the language of it.
11 In the first phrase, before the semicolon, which said,
12 All such indebtedness, meaning this indebtedness that
13 we just previously said could be in the manner and on the
14 terms and conditions as they may prescribe, then we say,
15 All such debt has this irrevocable pledge and taxing power
16 and then we say, unless such debt. If it has to, you have
17 used the word such twice, unless such debt has this ir-
18 revocable taxing power, then it is not to be considered
19 indebtedness of the State. It gets twisted.

20 MR. CASE: No, it doesn't. Perhaps I can help
21 you by explaining to you what this sentence says and what

1 it does, because this of all places in here is truly the
2 place where we have words apart, which are known by
3 bankers, investment bankers, et cetera, the words which
4 I am talking about are, quote, an irrevocable pledge of
5 the full faith and credit and unlimited taxing power of
6 the State.

7 Those words are found on every general obliga-
8 tion bond prospectus or advertisement that you will see
9 in the newspapers, or receive from your banker. They
10 mean, in effect, and the Court of Appeals has recently
11 said that they mean, in the MIDFA case, which is referred
12 to in the memorandum, a pledge of everything you have got.
13 This is it, boys. This is all she wrote, and this is the
14 way to express it. This is the way bankers express it.
15 That is what that means.

16 When you come to the second section here we
17 are dealing with that very troublesome question that we
18 talked about earlier, namely, what is the meaning of the
19 word, indebtedness, because we have had all these cases,
20 when the Susquehanna Bridge was built, you had a case,
21 Lexington Market Authority, you had a case, Port Authority

1 a case, three cases this year, and what you get into here
2 is that there are a lot of times where the State may
3 want to set up other kinds of financing techniques which
4 are not general obligation bonds and which should not be
5 hedged with these restrictions, such as revenue bonds,
6 for example. The best known example, of course, are our
7 crossing bonds.

8 We have had to go to the court every time to
9 have the court tell us that these were not debts and
10 that therefore you didn't have to pledge the State's
11 credit, and you didn't have to have the fifteen-year
12 limitation. You didn't have to have all the rest of it.
13 Now, what this clause after the semicolon does is, it
14 removes for all time, hopefully, this area of contentious
15 litigation, because unless the act uses the magic words,
16 bear in mind the words, irrevocable pledge of the full
17 faith and credit and unlimited taxing power, are magic
18 words, like paid to the order of on a negotiable instru-
19 ment. Unless those magic words are used, then whatever
20 the Legislature does in setting up these other authorities,
21 they don't create a State debt, and this Section doesn't

1 apply.

2 MR. GENTRY: The words, an indebtedness of
3 the State, the last words of the sentence, you are only
4 talking about a general obligation bond?

5 MR. CASE: That is right.

6 MR. GENTRY: Elsewhere, where you use, created
7 on behalf of, State debt, all the times it is used, it
8 is a general obligation?

9 MR. CASE: That is all this Section deals with.
10 That is all it deals with.

11 THE CHAIRMAN: As a corollary to that, there
12 is no limitation at all on the issuance of such things
13 as a revenue bond, for instance.

14 Mrs. Freedlander?

15 MRS. FREEDLANDER: I, too, hesitate to ques-
16 tion Mr. Case on this, because I know this has been worked
17 over carefully, but I would like to question the fact,
18 does an act of the General Assembly purport to authorize,
19 or does it in fact, authorize? Do we need the word, pur-
20 port, because an act either authorizes or it doesn't
21 authorize.

1 THE CHAIRMAN: Mr. Case?

2 MR. CASE: Well, the word, purport, I suppose
3 was our idea of an act which might be construed to
4 create a State indebtedness, or somebody might say that
5 it would create a State indebtedness, because a State
6 agency is permitted to borrow money.

7 MRS. FREEDLANDER: If you have an act that
8 authorizes the creation of it and includes the irrevocable
9 pledge, is it not in fact, an act?

10 MR. CASE: It is an act, but an act purporting
11 to do this. In other words, suppose you had an act
12 which said in effect, the State shall incur indebtedness
13 in the amount of ten million dollars and issue in evidence
14 thereof its general obligation bonds, which again are
15 words of ours, general obligation bonds, and further
16 suppose that it said, these bonds shall be serviced by
17 the tax extracted from the shellfish industry, and that
18 they shall last for fifty years.

19 That would be an act purporting to create a
20 general obligation indebtedness, but because it did not
21 contain the magic words, the State would not be obligated

1 as on a general obligation indebtedness, even though the
2 Legislature had in so many words said that it would,
3 because it didn't include a pledge of the full faith
4 and credit and unlimited taxing power.

5 MRS. FREEDLANDER: You are saying that the act
6 must include this pledge. Therefore, the act is an
7 authorization based on the inclusion of such a pledge,
8 because the Constitution is requiring such a pledge in
9 such an act.

10 MR. CASE: If it is to be a general obligation
11 bond in fact, it must include the pledge, and if it
12 doesn't include the pledge, then it may be something, but
13 it is not a general obligation bond.

14 THE CHAIRMAN: Even though the statute purports
15 to call it such?

16 MR. CASE: That is right.

17 THE CHAIRMAN: Dr. Burdette?

18 DR. BURDETTE: I would like to revert to Mrs.
19 Freedlander's question, to the Chairman of the Committee.
20 Mrs. Freedlander is talking about a question of style,
21 and as the Chairman of the Committee on Style, I should be

1 very hesitant to bring up in that Committee changes of
2 style language if they would affect the substance.

3 Mrs. Freedlander, to my mind, is not talking
4 about removing the magic words, which nobody wants to
5 remove, but rather talking about the awkward language,
6 purporting to authority, and I am wondering if one can
7 instead of saying, purporting to authorize, say,
8 authorizing the creation, because I would call to the
9 attention of the Committee that if one later goes on and
10 wants to be perfectly consistent, and after the comma
11 one would say, the obligation so purported and not so
12 authorized, because the word, purport, impugns the
13 authorization. I don't believe the Committee really
14 intended to do that.

15 THE CHAIRMAN: I think it did intend to do
16 that.

17 MR. CASE: That is right.

18 DR. BURDETTE: If they want to impugn the
19 authorization, they should use the language purported,
20 shall not be considered an indebtedness of the State. It
21 almost implies it has been authorized. I am asking can we

1 help to clean up language a bit. This is terribly
2 awkward language, but maybe it is necessary.

3 THE CHAIRMAN: In line 7, the second suggestion
4 would be that between, so, and authorize, you would insert
5 the words, purported to be, so it would read, the obliga-
6 tion is so purported to be authorized?

7 DR. BURDETTE: That makes it worse.

8 THE CHAIRMAN: I understand.

9 MR. CASE: It is surplusage, but it doesn't change
10 it.

11 DR. BURDETTE: Do we have to have, purported,
12 in here?

13 MR. CASE: Yes.

14 DR. BURDETTE: In the first part?

15 MR. CASE: Yes. What you are doing here is
16 contemplating the General Assembly trying to do this,
17 and failing it. Do you follow me?

18 DR. BURDETTE: I see, but then from 7 to 8,
19 one isn't crossing the --

20 THE CHAIRMAN: Dr. Burdette, you said, but I see,
21 but then in 7 to 8, and we don't have the rest of your

1 thought.

2 DR. BURDETTE: In 7 and 8, the language used
3 is that of an accomplished authorization. It is an incon-
4 sistency with the Line 6 part which is an attempted or
5 purported authorization.

6 MR. CASE: But note the difference in language.
7 The purported deals with indebtedness, which is the
8 word of art in this Section. The thing accomplished is
9 the issuance of an obligation. An obligation doesn't
10 necessarily, isn't an indebtedness and indeed wouldn't
11 be an indebtedness under this. That is exactly the reason
12 for this.

13 THE CHAIRMAN: Mr. Case, may I suggest language
14 that might meet both? In Line 6, if you took out the
15 language, purporting, and let it read, unless the act
16 of the General Assembly -- you have to take out purporting
17 to and change authorize to authorized -- unless the act
18 of the General Assembly authorizing the creation of a,
19 instead of such indebtedness, includes such an irrevocable
20 pledge, the obligation shall not be considered to be an
21 indebtedness of the State.

1 MR. CASE: I would hate to do that because the
2 word, such, you see ties into the sentence above that,
3 such indebtedness. We are talking about general obliga-
4 tion bonds. I don't see that it adds anything. I don't
5 think it adds anything.

6 MR. BROOKS: Could you say, this indebtedness?

7 THE CHAIRMAN: The point I made, when you
8 say, such indebtedness, you are referring back to an
9 indebtedness of the State and in the first clause in Lines
10 5 and 6, you are referring to the possibility that there
11 may be an indebtedness, but not one of this character,
12 not such an indebtedness, so that you would then say, if
13 you followed my suggestion, unless the act of the General
14 Assembly authorizing the creation of an indebtedness
15 includes such an irrevocable pledge, the obligation so
16 authorized shall not be considered an indebtedness of the
17 State.

18 MR. CASE: To me, it doesn't add anything.

19 THE CHAIRMAN: It would authorize an indebted-
20 ness that is not an indebtedness of the State, a revenue
21 bond, for instance?

1 MR. CASE: We call that an obligation.

2 MR. SYKES: Mr. Chairman, I think the point
3 can be met, consistent with the Committee's desire, by
4 saying, unless the act of the General Assembly authorizing
5 the creation of an obligation includes such an irrevocable
6 pledge, the organization so authorized shall not be con-
7 sidered an indebtedness of the State. I think that would
8 clear it up and avoid clumsiness. How does that strike
9 Mr. Case? If you make a distinction between an obligation
10 and a debt.

11 MR. CASE: To me, it is not clumsy. To me, it
12 is perfectly clear. What you are doing is just moving
13 words around.

14 MR. SYKES: There is a distinction between
15 an obligation and indebtedness, and the only way you
16 can create an indebtedness is by the magic word, and you
17 authorize an obligation, not purport to authorize it, and
18 that obligation doesn't contain the magic words, then it
19 is not an indebtedness.

20 MR. CASE: But you may purport to authorize an
21 indebtedness, but unless you use the magic words, you

1 don't do it. That is the whole point. You may purport,
2 just as the example I gave you, you may purport to
3 authorize the general obligation bonds, but you may neglect
4 in that act to put in the magic words. If you don't put
5 in the magic words, you purported to authorize indebted-
6 ness but the Section says you haven't done it. All you
7 have done is authorize an obligation.

8 MR. CLAGETT: Will you reread your language,
9 Mr. Chairman? I think we are quibbling.

10 THE CHAIRMAN: Mr. Sykes' language meets the
11 objection to mine. I will read his. Unless the act of
12 the General Assembly authorizing the creation of an
13 obligation includes such an irrevocable pledge, the
14 authorization so authorized shall not be considered an
15 indebtedness of the State.

16 MR. SYKES: I would move that.

17 MRS. FREEDLANDER: Second.

18 THE CHAIRMAN: Is there any discussion? Mr.
19 Case, do you want to comment any more?

20 MR. CASE: Well, unless I had the words
21 laid down so that I could analyze them carefully --

1 THE CHAIRMAN: The change is very little.

2 MR. CASE: It sounds pretty substantial.

3 THE CHAIRMAN: You can mark it on there. In
4 Line 5, unless the act of the General Assembly, take out,
5 purporting to authorize, and insert the word, authorized,
6 and then in the same line, take out the words, such in-
7 debtedness, and put in, an obligation; and it would read,
8 unless the act of the General Assembly authorizing the
9 creation of an obligation so authorized shall not be
10 considered an indebtedness of the State.

11 MR. CLAGETT: Question, Mr. Chairman.

12 THE CHAIRMAN: Wait just a second. I want to
13 give Mr. Case an opportunity to think that over.

14 MR. CASE: Well, you see the trouble is that
15 what we were driving at was a situation where the General
16 Assembly might seek to authorize a bond but was refusing
17 to go the whole hog. That is why we used the words, such
18 indebtedness, because up until now, we have been talking
19 about G.O. bonds.

20 THE CHAIRMAN: Wouldn't that situation be em-
21 braced within the language, as would also the other

1 situation where they actually authorized the revenue bond,
2 for instance?

3 MR. CASE: To authorize a revenue bond,
4 wouldn't --

5 THE CHAIRMAN: If the Legislature purported
6 to authorize the issue of a general obligation bond, that
7 would be an act authorizing the creation of an obligation.
8 It would not be an act authorizing the creation of an in-
9 debtedness.

10 MR. CASE: I must confess, to me it doesn't
11 add anything.

12 THE CHAIRMAN: Any further comment? Any fur-
13 ther discussion? Are you ready for the question?

14 MR. CLAGETT: Question.

15 THE CHAIRMAN: The question arises on the amend-
16 ment to change the language in Lines 5, 6 and 7, so that
17 the second clause of the second sentence would read, Unless
18 the act of the General Assembly authorizing the creation
19 of an obligation includes such an irrevocable pledge,
20 the obligation so authorized shall not be considered an
21 indebtedness of the State.

1 All those in favor, signify by saying Aye.
2 Contrary, No. The Ayes have it.

3 Any question or comment with respect to the
4 third sentence, beginning at the end of Line 8?

5 DR. BARD: I have a question, not a comment.
6 I am naive in this particular area, Mr. Case. Will you
7 explain to me, for example, if, let us say, the Kennedy
8 toll road, if it did not bring in enough money, let us
9 say, in a particular year, would under this sentence
10 here, would this mean that if the indebtedness could not
11 be paid as a result of this, the first revenues thereafter
12 received applicable to the general funds of the State --

13 MR. CASE: That is a very good question, Pro-
14 fessor. It illustrates and highlights some of the fine
15 things that you get into. In the first place, the
16 Kennedy Expressway is financed by an issue of revenue
17 bonds, so if it were done under Section 34, as we are
18 talking about, which has now been amended, it would not,
19 or it would have been a, quote, obligation, unquote, of
20 the State, but not having the magic words, it would not
21 have been a general obligation bond, and those bonds would

1 have said on their face that they are payable only from
2 the tolls. Hence, if the bond annuity generated by the
3 tolls was deficient, that is too bad. The State doesn't
4 put up a nickel. Now, generally, I might add that in
5 these cases the Legislature, where it does not authorize
6 a pledge of full faith and credit and unlimited taxing
7 power, will state on the face of the bonds that full
8 faith and credit of the State is not pledged, is not,
9 n-o-t, pledged, so that the fellow who buys that obligation
10 knows that if enough cars don't go across, they are going
11 to have to look elsewhere.

12 Incidentally, you might be interested to know
13 that the Kennedy bond issue, which is due in 2001, will
14 be paid off in ten years' time.

15 THE CHAIRMAN: Mr. Gentry?

16 MR. GENTRY: A question on the debt service
17 provisions in Line 10 and 15. You said, installments of
18 principal. You have already used the word, timely, and
19 I am wondering why you added, installments of principal.
20 Would not the same provision apply if the bond was at
21 maturity and the whole of the principal were due?

1 MR. CASE: This involves the unique feature
2 of public finance, Jim. Generally speaking, when your
3 company, for example, issues bonds, they are term bonds,
4 and that is to say, they would be in fifteen or twenty-
5 five years or if the Telephone Company issues bonds,
6 some are due in twenty-five years. Municipal bonds are,
7 generally speaking, not term bonds. They are what we
8 call serial maturity bonds, and there are installments
9 coming due every so often, usually on a yearly basis;
10 and it is for that reason that the word, installment, is
11 used, and of course, timely means that you have got to
12 pay the installment when it is due.

13 MR. GENTRY: Doesn't there come a time at
14 maturity when the whole of the principal then remaining
15 unpaid is due?

16 MR. CASE: That is just another installment.
17 That is the last installment.

18 THE CHAIRMAN: Mrs. Bothe?

19 MRS. BOTHE: Dr. Bard used an unfortunate example
20 and I am not going to try to use one, but where you have
21 a G.O. bond, I would like to know, for instance, what the

1 general funds of the State that would be first applicable
2 to the payment of it would be. Would we have to take the
3 money from the school funds, or would we have to take it
4 from Welfare?

5 MR. CASE: You take it from anything. It is
6 any funds that are not specifically dedicated, the first
7 call.

8 MRS. BOTHE: When you say, not specifically
9 dedicated, you mean not appropriated to a specific pur-
10 pose by the Legislature?

11 MR. CASE: And dedicated by the Legislature to
12 that purpose.

13 THE CHAIRMAN: As, for instance, gasoline tax
14 dedicated to some other bond.

15 Mr. Mindel?

16 MR. MINDEL: I would like to ask if you have
17 a right of redemption in the bonds, would the word, install-
18 ment, include the right of redemption, if you can conclude
19 your bonds at an earlier date?

20 MR. CASE: Yes, I think so. Installment would
21 then become due by reason of the exercise of the call

1 feature.

2 MR. MINDEL: You think that covers it?

3 MR. CASE: Yes.

4 THE CHAIRMAN: Dr. Burdette?

5 DR. BURDETTE: I am wondering, Mr. Chairman,
6 if the Chairman of the Committee would accept for a little
7 clearer English, Line 13, the words, that are, after re-
8 ceived?

9 MR. CASE: What do you want to do now?

10 DR. BURDETTE: I am trying to smooth the
11 English so that even a high school student can find out
12 what the sentence means.

13 MR. CASE: I have got news for you. High
14 school students aren't going to be involved with this
15 Section.

16 DR. BURDETTE: I am looking only at pure
17 English of it.

18 MR. CASE: Let's put it this way. It wasn't
19 written for them.

20 DR. BURDETTE: I would like to write it both
21 ways, if possible. Possibly, received applicable, is an

1 awkward way of saying it. I would think the words, that
2 are, should go between, received applicable. Well, that
3 is a very funny expression, just in pure English. The
4 Comptroller shall set apart from the first remnants
5 thereafter received that are applicable.

6 THE CHAIRMAN: Mr. Case, do you follow? Line
7 13 between received and applicable, insert the words,
8 that are?

9 MR. CASE: He is nit picking again. I don't
10 know whether you want to sit here and nit pick or not.

11 THE CHAIRMAN: There would be a little more to
12 it than this, because he is the Chairman of the Committee
13 on Style but dealing with a Section such as this, I am
14 sure that Committee would be very reluctant to make any
15 changes in language.

16 MR. CASE: I am on that Committee, too. I
17 won't let him make any.

18 THE CHAIRMAN: Do you have any objection to
19 the language?

20 MR. CASE: Yes, I think it should stay exactly
21 the way it is. This is written by one of Baltimore's best

1 bond counsel, not me, and checked over with a lot of
2 people and everybody understands it.

3 THE CHAIRMAN: Dr. Burdette?

4 DR. BURDETTE: I don't insist. I think it
5 hurts the symmetry of clear, straightforward English.

6 THE CHAIRMAN: Judge Adkins?

7 JUDGE ADKINS: I have a caveat here to the
8 use of the term, Comptroller. We have eliminated the
9 Comptroller as a constitutional officer subject to, I
10 gather, further consideration between Mr. Case's Com-
11 mittee and my Committee. I wonder if maybe that ought
12 to be left open for the results?

13 MR. CASE: It is left open in substance.

14 JUDGE ADKINS: Comptroller might not be the
15 right fiscal officer.

16 THE CHAIRMAN: We are putting the word in
17 brackets to flag it for later action. Any further com-
18 ment on this sentence?

19 The next sentence, beginning on Line 15, All
20 State indebtedness shall mature within twenty-five years
21 from the time when such indebtedness is incurred.

1 Any questions?

2 DR. BARD: I was present, Mr. Chairman, when one
3 of the bond officials said he thought twenty would be
4 better. Will you explain why you finally hit upon
5 twenty-five?

6 MR. CASE: You remember at the meeting in
7 Mr. Smith's office, when we had all the investment bankers
8 and commercial bankers present, there was not complete
9 unanimity of opinion on that point, but I think that most
10 everybody said twenty-five years, they thought, would be
11 all right. After that we went to Moody's. We went to
12 New York and talked to people up there, and the advice
13 we got at that meeting was that twenty-five would be
14 perfectly okay, and that really it wasn't so much the length
15 of the maturities as it was the use of the magic words,
16 and the sentence that has just been passed, where it is
17 the first call.

18 THE CHAIRMAN: Mr. Sykes?

19 MR. SYKES: I would like some clarification
20 on when the indebtedness is incurred. 34 says time of
21 contracting the same, and you have changed the language.

1 MR. CASE: That is a good question. The word,
2 incurring indebtedness, has been subject to many decisions
3 of the courts, Melvin, and it means the date of the bond,
4 so that, and generally speaking, this will be on an even
5 date, such as October 1. Those bonds will be authorized
6 before that time, and generally speaking, will be delivered
7 after that time, but neither one of those times is the
8 date that the debt was incurred. The debt is incurred on
9 the date that is stated on the bond, and that is the
10 time that the interest begins to run. It is a word that
11 is more precise in the issuance of public securities than
12 is found in present Section 34.

13 MR. MINDEL: Mr. Chairman, Dick, I think it
14 would be interesting for the Commission to know that the
15 Legislature authorizes some municipalities or counties
16 to have bonds, say for thirty, I think, isn't forty the
17 maximum? I think it would be interesting to know why
18 the State limits itself to twenty-five years, where some
19 of the municipalities can have forty-year bonds. Can
20 you tell us something about that?

21 MR. CASE: Baltimore County is the best example.

1 On one of the forty-year bonds we have, they have some-
2 where in the neighborhood of fifty or sixty million dol-
3 lars of metropolitan district funds which are forty years.
4 They scaled them down recently. Most of the school bonds
5 throughout the State are issued on a thirty-year basis.
6 This County that we are in right here has about 85 million
7 now, 90 million of school bonds outstanding. They are
8 all thirty-year bonds. Montgomery has most of its bonds,
9 it has next to Baltimore the largest amount of G.O.'s
10 out, and most of those are thirty years. The reason is
11 that it is felt that a capital improvement, school build-
12 ings, generally speaking, is what we are talking about in
13 the counties, will last about thirty years, and the idea
14 is that the obligations should run serially over the life-
15 time of the capital asset, the funds of which were used
16 to build it.

17 The fifteen-year -- let's start at one again --
18 the fifteen-year business is purely an historical
19 anachronism found in Section 34. I guess it was back in
20 1851, incurring indebtedness for fifteen years was looked
21 at as a tremendously long period of time.

1 Mind that bonds weren't issued at that time
2 for capital improvements as we know them today. They were
3 issued to turn over to the railroads and the canals and
4 by them sold on the open market. I suppose that a fifteen-
5 year debt, looking at it from that standpoint was pretty
6 long, but when we came along to the modern era of
7 financing, bankers and investment people decided that the
8 way to determine the maturity of a bond issue should be,
9 given it some relation to the capital asset that was
10 built as a result of the issuance of that bond issue.
11 We chose twenty-five. It is a judgment figure, simply
12 because we were told that it was a safe figure, and will
13 give the State about a hundred per cent more flexibility
14 in its financing.

15 MR. CLAGETT: Mr. Chairman, then I read the
16 words in Line 15, All State indebtedness to be restricted
17 to State indebtedness and would not be applicable to
18 indebtedness of municipalities or other local subdivisions.

19 MR. CASE: That is correct, not only that,
20 but it would not be applicable to any obligation which
21 did not carry the magic words.

1 THE CHAIRMAN: Any further question on this
2 Section?

3 MR. SAYRE: When you say Section --

4 THE CHAIRMAN: I am sorry, this sentence. There
5 is going to be considerable discussion with respect to
6 the last sentence. Let's break for about ten minutes.
7 There will be some coffee.

8 (At this time a short recess was taken.)

9 THE CHAIRMAN: May we resume our places, please.

10 As the Committee has pointed out in its Report,
11 its Report deals specifically, and its recommendation,
12 with respect to Article III, Section 34, deals only with
13 State indebtedness, but to some extent the same principles
14 may be applicable in connection with the provisions of
15 the Constitution as to indebtedness to be incurred by
16 local subdivisions, which has not yet come before us.
17 That might be particularly pertinent in connection with
18 the last sentence. I want to call your attention to the
19 fact that Page D attached to your Report, which is a print
20 of Article XI, Section 7, is a print of that Section as
21 it would be amended on the basis of the constitutional

1 amendment proposed by the Legislature to be voted on
2 next November. That is, not the present provision, or the
3 provision under which the City of Baltimore has been
4 operating for many years. It does not have the detailed
5 limitations and restrictions. Neither does your red book,
6 because the Section in the red book is the Section as it
7 will be amended if the amendment is approved in November.

8 If you want to get the provisions of Article
9 XI as they now exist, you will have to look at the
10 published Constitution in the Annotated Code.

11 I would also like to suggest to you that the
12 problem presented by the last sentence is a very impor-
13 tant one. The times today are different, perhaps, than
14 they were in 1850 or in 1840, but somewhat the same
15 problems exist in that then there were great pressures
16 on the State and local subdivisions to extend credit or
17 lend the credit to railroads, turnpikes and canals.
18 Today you have the same sort of pressures on the State and
19 local subdivisions particularly to extend credit for
20 various types of urban renewal projects and similar projects.

21 Inasmuch as the transcript of this hearing is

1 really the only record of our debate on this, I would
2 sincerely hope that the comments concerning this last sen-
3 tence and the discussion is full and complete.

4 Are there any questions as to the last sentence,
5 beginning on Line 17, and keep in mind, as Mr. Case pointed
6 out to you, that the sentence in Page B, attached to the
7 Report, which is the form recommended by the Committee,
8 is different in that it is somewhat shorter than the same
9 sentence on Page G.

10 Mr. Sykes?

11 MR. SYKES: Just a technical point. In the
12 last line of the version of Page G, I am sure that the
13 Committee did not mean to require the General Assembly to
14 limit the loan to a period of twenty-five years, but
15 rather to limit it to a period of not exceeding twenty-
16 five years.

17 MR. CASE: Let me say for further clarafica-
18 tion, on G, the words in the brackets, of State assets,
19 should be stricken out. When I handed this to John, this
20 is my way of indicating to my secretary that matters
21 come out, and I forgot to tell him that. That really hasn't

1 any place there; limiting any loan or extension of State
2 credit to a period of not exceeding. That would be right.

3 MR. SYKES: Not exceeding?

4 THE CHAIRMAN: You don't want, it, o-f?

5 MR. CASE: Of not exceeding.

6 THE CHAIRMAN: To a period not exceeding?

7 MR. CASE: Period of not exceeding.

8 THE CHAIRMAN: The point is, you don't need it,
9 o-f. It should be period, not exceeding. You don't need
10 the word, o-f.

11 MR. CASE: Okay. Very well. That is right,
12 Melvin.

13 MR. SYKES: The other question I was going to
14 ask was whether anyone, and if so who, is going to deal
15 with the question of whether there should be analogous
16 limitations on municipalities?

17 THE CHAIRMAN: The Committee on Local Subdivisions,
18 Political Subdivisions, Mr. Clagett's Committee.

19 MR. SYKES: I didn't see it expressly dealt with
20 in the draft.

21 THE CHAIRMAN: It hasn't been as yet.

1 MR. CLAGETT: I would like to ask whether or
2 not the word, corporation, in Line 18, includes municipal
3 corporations.

4 MR. CASE: It has never been held to.

5 MR. CLAGETT: Would it include authority, an
6 incorporated authority for special service functions?

7 MR. CASE: It has never been passed on by the
8 Court of Appeals. The State never tried to do this. I
9 would assume it would.

10 MR. CLAGETT: These questions are for informa-
11 tion as well as a matter of record. I don't want to
12 debate your answers. I just want to get the answers.

13 The next question I have is, Mr. Chairman, in-
14 the event that a local subdivision, regardless of which
15 one defaulted in its G.O. obligations, could that indebted-
16 ness be picked up by the State as a G.O. obligation within
17 the restrictions prescribed in this last sentence of your
18 draft?

19 MR. CASE: If the State guaranteed it?

20 MR. CLAGETT: No, not if it had guaranteed it,
21 but if on default and in order to save the defaulting

1 subdivision, could the State step in and make it a
2 general obligation?

3 MR. CASE: I think it probably could, but
4 that wouldn't come under this Section. It would come under
5 the first sentence. There the State would go ahead
6 and incur the indebtedness, issue bonds, and pay them off.

7 MR. SAYRE: There is nothing to prevent it,
8 though, from coming under this Section if the General
9 Assembly so decided, is there?

10 MR. CASE: No. I think that is probably right;
11 assuming now it is public purpose.

12 MR. SAYRE: Yes.

13 THE CHAIRMAN: Mr. Case, let me ask you a ques-
14 tion then with respect to the last sentence.

15 MR. CASE: Which is as I think it should be.

16 THE CHAIRMAN: Is it the intention of the Com-
17 mittee that the last sentence is referring only to
18 private individuals, associations, or corporations?

19 MR. CASE: It is to any individual, association,
20 or corporation, as I interpret it. Of course, that language
21 has been in the Constitution since 1851, any, unless the

1 public purpose is served. In other words, the State
2 credit could be given to a private corporation under this
3 if a public purpose is served.

4 THE CHAIRMAN: That is not my question. Is
5 it intended by the Committee that the last sentence begin-
6 ning in Line 17 could apply to a political subdivision?

7 MR. CASE: I don't see why not. It would be
8 a corporation. If a public purpose were served, I think
9 the State could lend its credit.

10 THE CHAIRMAN: Then I think we ought to point
11 out, because I am not sure that it is entirely clear to
12 the Members of the Commission, that the gift or loan of
13 assets or credit under this last sentence is not subject
14 to the limitations in the preceding part of the Section.
15 It is not intended to be.

16 MR. CASE: Maybe it would be helpful, Mr.
17 Chairman, because in my presentation I said that I would
18 come back to this Section with somewhat more of a detailed
19 explanation, if you would permit me, or if the Commission
20 would like me to do so, to restate briefly the problem
21 that is involved here and the areas of resolution that

1 have been determined by the Committee.

2 THE CHAIRMAN: I think that would be helpful.

3 MR. MILLER: If you do that, would you explain
4 which one of these versions you are recommending?

5 MR. CASE: I will, indeed.

6 The problem here starts with existing Section
7 34, which says in effect, and if you will look at your A
8 line, you will see, at Line 7, the credit of the State shall
9 not in any way be given or loaned to or in aid of any
10 individual, association, or corporation.

11 That is all we really are talking about here
12 is those few words, and we call that the credit clause
13 of Section 34. The credit clause has not been before the
14 Court of Appeals very often. Actually, only in two cases,
15 which have dealt with it. One of them I have already
16 discussed. That is the case in which Johns Hopkins
17 needed some funds for its Engineering Building, and the
18 State authorized a bond issue to raise funds and money
19 to be used in part for the construction of that building.
20 The argument was made there, I might add by now Circuit
21 Court Judge Harrison L. Winter, that this was a lending of

1 the State's credit, and therefore violated the credit
2 clause, because it was a lending of credit to a corpora-
3 tion, but as I have already indicated, the Court of
4 Appeals said No, that even though you used your credit to
5 go out and get the money, that what you really did was
6 turn the money over to the Hopkins and cash is not credit,
7 and hence this is perfectly all right.

8 The second case that involved this, and the
9 only other case on a State level which directly involved
10 the credit clause as such was a case which was before
11 the Court of Appeals at the last term. In this particular
12 case, the act of the Legislature said, in effect, that
13 a corporation, the public corporation should be established,
14 and that that corporation should have the power to
15 guarantee the payment of mortgages which would be made
16 to local political subdivisions for the purpose of
17 erecting buildings for industries' use. Typically, it
18 is the old FHA gimmick. A party borrows money from a
19 bank, builds a building with the money, leases the build-
20 ing to an industry. The money that is paid by way of
21 rental by the industry to the county is used to pay off

1 the bank. The bank is securing this because the act fur-
2 ther said that the full faith and credit of the State
3 should be pledged to this undertaking. That is to
4 say, if the industry failed to pay and hence the county
5 could not pay, that the full faith and credit of the
6 State would be used to meet this obligation.

7 This act, the pledge of the full faith and
8 credit, was the point of inquiry before the Court, and it
9 was argued in the alternative that, first, the act really
10 didn't pledge the full faith and credit although it said
11 so in so many words, and secondly, that if it did, then
12 it was invalid as in violation of Section 34, which says
13 that you can't pledge the full faith and credit to a
14 corporation.

15 The Court of Appeals ducked the main issue,
16 unfortunately for our discussions this morning, holding
17 in effect that the act did not, in effect, pledge the
18 full faith and credit and therefore the authorities'
19 attempt to do so was a nullity and void, but in the
20 preparation and argument of this case, it was made pretty
21 clear from the bench that the court would not sustain

1 the pledge of the State's credit to a corporation unless
2 they could be convinced that a public purpose would be
3 served thereby. Hence, if it could be found that the
4 industry in question might relieve unemployment in
5 Appalachia, then conceivably this would be a valid pledge
6 of the credit, but on the other hand, if the corporation
7 were the Bethlehem Steel Company, and the act is broad
8 enough to permit a guaranteeing of an obligation made for
9 the benefit of Bethlehem Steel Corporation, and I use this
10 merely as an illustration -- I could use C. and P. of
11 Maryland -- then it was made pretty clear by remarks
12 from counsel and also certain dicta and material quoted
13 by the court that this would be struck down.

14 Now, generally throughout the country the
15 rule today is that a State can lend its credit to persons
16 or corporations whether they be private or public if it
17 can be shown that a public purpose will be served thereby.
18 As the Chairman of the Committee said in opening this
19 discussion, examples are urban renewal, industrial
20 development, companies, or credit corporations, and that
21 kind of thing.

1 Now, the draft which is to be found on Section
2 B merely says, the assets or credit, assets are used
3 to get away from this silly argument that cash is not
4 credit, and that is a new word, but the assets or credit
5 of the State shall not in any manner be given or loaned
6 to any individual, association or corporation, individual,
7 association or corporation, words in existing 34, unless
8 the public purpose will be served thereby, and now we
9 come definitely to the point that was made earlier about
10 the loan, where we specified that in this case, since it
11 is a loan of credit, and not an actual borrowing for
12 specific purpose, unless the act specifically states in
13 its body what the public purpose is.

14 Now, the majority of the Committee felt that
15 these were sufficient safeguards in the loaning of the
16 credit. Bear in mind that this is generally what the law
17 is throughout the country today, but whether or not these
18 are adequate safeguards is a close question, and two
19 Members of the Committee felt that there ought to be at
20 least one other safeguard, and that is that just as a
21 State indebtedness cannot be incurred for a period of

1 greater than twenty-five years, so also an extension of
2 the State's credit should be limited to a period of
3 twenty-five years, and that is the intention of the addi-
4 tional language found in Page G, where you will see the
5 words, and limiting any loan or extension of State credit
6 to a period not exceeding twenty-five years.

7 In connection with all this, I call your
8 attention to the new Section which deals with Baltimore
9 City, which says merely, provided, however, that the
10 credit of the Mayor and City Council of Baltimore may
11 be given or loaned to or in aid of any individual,
12 association or corporation, as the same may be authorized
13 from time to time in an act of the General Assembly, which
14 is much, much broader than anything we are suggesting
15 here for the State, and may be something that we will
16 want to talk about later on as far as the City is con-
17 cerned, but it is completely open as far as Baltimore
18 City is concerned.

19 The issue, then, before the Commission, as I
20 see it, is, assuming that, again, the major yardstick is
21 the public purpose, as I think it should be and as the

1 whole Committee thinks it should be, which is, in effect,
2 the due process point. Do you want to go further and say,
3 not only should the public purpose be stated in the act, but
4 that the extension of that credit should be limited to
5 no greater a period than twenty-five years?

6 That, Mr. Chairman, is the substance of the
7 issue as I see it.

8 THE CHAIRMAN: Mr. Sykes?

9 MR. SYKES: In that connection, do I understand
10 that the phrase, credit of the State, is used in a
11 broader and more colloquial sense than we had been using
12 the term, State indebtedness, for earlier in the paragraph,
13 and that credit of the State means not only State indebted-
14 ness as above defined, but any instance where the State
15 creates an obligation to pay, even though it might not
16 be a general obligation and an irrevocable pledge of
17 full faith and credit of the State?

18 MR. CASE: It does not mean indebtedness. It
19 is not synonymous with indebtedness.

20 MR. SYKES: Is it broader?

21 MR. CASE: It is not broader because it doesn't

1 include it.

2 MR. SYKES: I see.

3 MR. CASE: It means cases in which the State
4 says in effect, if somebody else doesn't perform, the
5 State will.

6 MR. SYKES: Do you really mean that this
7 doesn't include it? What about the situation where the
8 State lends the credit in the sense of creating indebted-
9 ness, even though a contingent indebtedness -- it says
10 if somebody else doesn't perform, then we will irrevocably
11 pledge the full faith and credit of the State, using the
12 magic words, et cetera, to enable to perform. Don't you
13 intend to include that, too? Or do you? I don't know.

14 MR. CASE: What we are saying is that, and I
15 am not sure that I get your question, Melvin, if you have
16 an obligation incurred by another entity other than the
17 State and it is merely guaranteed by the State, then there
18 is a loan of the full faith and credit of the State.
19 This is not considered State debt. It is contingent debt,
20 but it is not debt. It is not considered in figuring
21 the debt ratio of the State, for example.

1 Now, we do intend that the State can do this.

2 It should be allowed to do this if a social
3 justice will be served and if social good will be accom-
4 plished. The question really is that it should not be
5 allowed to do it where private, as distinguished from
6 public purposes are to be served. That is point one.

7 Now, point two is, should you have other
8 limiting safeguards, such as a twenty-five year limit?

9 MR. SYKES: I am still with point one. I am
10 concerned about the situation where, as in the Hopkins
11 case, the State wants to give to some private individual
12 or institution, but it doesn't do what they did in Hop-
13 kins. It doesn't issue the bonds and take the money and
14 turn it over. That would be covered by assets. Instead,
15 it does precisely what they avoided in Hopkins. It
16 issues bonds and provides in the bonds that the proceeds
17 are to be earmarked for a private institution.

18 Is it not intended in your draft --

19 MR. CASE: I don't know that that is any dif-
20 ferent from what happened at Hopkins. That is exactly
21 what did happen at Hopkins. They earmarked funds for

1 private institutions. They have also done it for a
2 number of other colleges.

3 MR. SYKES: But I am talking about instead of
4 giving the cash where the bond itself provides, that it
5 is the credit which is being lent to the private institu-
6 tion.

7 THE CHAIRMAN: Wouldn't your illustration be clear
8 if you supposed the case of an issue of bonds by the Johns
9 Hopkins University guaranteed by the State of Maryland
10 and the full faith of the State pledged?

11 MR. CASE: Now, you are talking. That is the
12 example.

13 MR. SYKES: All I want to be sure of, I don't
14 pretend to be a technical expert in this field, is that
15 every instance of the lending of credit in the colloquial
16 sense, whether it is an indebtedness of the State as you
17 have defined it here, or whether it is not, is subject
18 to the limitations of this last sentence. Now, you have
19 indicated that you can't conceive of any situation where
20 an indebtedness of the State properly so called could
21 be used to further private purposes. You have talked

1 about guarantees and other things. I don't know whether
2 any could exist or not, but I would be very unhappy with
3 an interpretation of credit of the State which would not
4 include an indebtedness properly so called in some pos-
5 sible fact situation where an indebtedness is the vehicle
6 used to help the private person, and where such a vehicle
7 might circumvent the limitations of this last sentence.

8 THE CHAIRMAN: I think I followed part of what
9 you said. Let me make this statement and see if Mr. Case
10 would agree with it. There is no prohibition in this
11 Section insofar as I am aware, none in the Constitution,
12 that would prevent the State through the Legislature from
13 making a gift of assets to a private individual, so long
14 as some public purpose would be served thereby. The
15 illustration of that is the gift to educational institu-
16 tions generally in support of education, private education-
17 al institutions. There is nothing to prevent that, and
18 all this last sentence does with respect to that situation
19 is reaffirm what I think is inherent in the Constitution
20 anyhow, and that is that it must be to serve a public
21 purpose.

1 The second situation is one where you are
2 lending credit, which means you are not incurring a present
3 indebtedness, and this is the real problem in this thing.
4 You have a contingent liability, which therefore the
5 Legislature can tend to ignore or forget about because
6 you don't have to pick it up in next year's budget, and
7 what you are doing is saying that you are lending the
8 credit in that you will pay if somebody else doesn't. You
9 will stand behind it, and in that situation, you are
10 pledging the full faith and credit of the State.

11 As I understand the Committee's purpose in
12 this Section, that can be done without respect to the
13 limitations set forth previously in this paragraph, but
14 it can only be done to serve a public purpose. The State
15 cannot agree to guarantee a loan that I may want to make
16 to buy a yacht because there is no public purpose to be
17 served thereby, but they could guarantee a loan for an
18 educational institution to build dormitories.

19 MR. CASE: That puts it very clearly, and let
20 me say, I think to give an illustration of just what we
21 are talking about here, let's assume, using Hopkins, I

1 think it is fitting that we should, and the campus of
2 the University of Maryland as an example, let's assume
3 that the Hopkins wants to put out an issue of revenue
4 bonds, as many universities are doing throughout the
5 country. Dormitory revenue bonds generally are sold on a
6 forty-year basis. The reason for this is that revenues
7 from dormitories, from students, tend to be reasonable,
8 and in accordance with their ability to pay, and there-
9 fore you can't generate enough bond service requirements
10 to pay off in an earlier period, so they are forty-year
11 bonds. Now, let's further assume that Dr. Eisenhower
12 comes to the Governor of Maryland and says, If we put out
13 these bonds under the name of Johns Hopkins on a revenue
14 basis, we are going to have to pay $6\frac{1}{2}$ per cent, because
15 the people who invest in these bonds are really not sure
16 that Hopkins is going to be able to fill up this dormitory
17 for all of forty years, but if the State would say, on
18 the back of that bond, that if it was ever defaulted upon,
19 the State's credit would be pledged to pick it up, then
20 we have got a lot of people who would buy the bonds, and
21 we would only have to pay $5\frac{1}{2}$ per cent; so the Governor

1 says, Okay, and the Legislature endorses this idea, and
2 it goes on.

3 Now, the State now has lent the credit to a
4 corporation for a public purpose and everything is met
5 and that would be okay under one version of the Committee's
6 Report. The other version would say that if the credit,
7 lending of credit extended over a period of twenty-five
8 years, you couldn't do it. That is the issue.

9 MR. SYKES: Just one more point: Is it true
10 that except for the twenty-five versus forty-year question,
11 which is the question between the two drafts, this
12 Section creates only one difference in the necessary
13 conditions for creation of a State indebtedness, as you
14 defined the term here, as a word of art, and the lending
15 or extension of State credit. Both of them have to be
16 for a public purpose, the indebtedness under the first
17 sentence and extension of credit under the last sentence;
18 and both of them have to be prescribed by the Legislature,
19 but the difference is that while the indebtedness need
20 not have an express statement in the language of what
21 public purpose is in the act, the extension of credit does

1 have to have that.

2 MR. CASE: This is a different distinction but
3 not a different ~~because~~ in the creation of the debt by
4 its very nature it would state the public purpose. You
5 have to have a debt for something, whereas the credit is
6 more involved, you see. You are not actually putting
7 out any money for anything, and therefore it would have
8 to be stated.

9 THE CHAIRMAN: Mr. Miller?

10 MR. SYKES: I think I understand.

11 MR. MILLER: I would like to ask the Chairman
12 a question. I don't actually follow this. If the State
13 guarantees such a bond, does it do it using the magic
14 words?

15 MR. CASE: It would, yes.

16 MR. MILLER: It would have to?

17 MR. CASE: Yes.

18 MR. MILLER: And then the question is whether
19 the magic words could be extended for more than twenty-
20 five years.

21 MR. CASE: That is the issue. Now, of course,

1 as a practical matter, what would happen would be that if
2 Johns Hopkins defaulted, let's continue on with the
3 example, of a forty-year period, if Johns Hopkins de-
4 faulted, then the State would have to go out and sell
5 its bonds. Now, the sale of those bonds would be governed
6 by all the safeguards, twenty-five years, et cetera. That
7 money would be used to pay off the other obligation,
8 and then you would have then the State indebtedness, which
9 would be subject to all the safeguards.

10 MR. MILLER: That would be the practical
11 solution, but as a matter of fact, aren't we, if we put
12 this language in here, in a sense nullifying or altering
13 the twenty-five year provision that goes before it?
14 That is the thing that concerns me.

15 MR. CASE: That concerned the Committee, too.
16 I don't think as a practical matter it would make any
17 difference, because I say, if the State were ever called
18 upon to perform, the only way it could perform -- well, I
19 don't visualize -- let's put it this way. There are two
20 ways it could perform. One, sell its own bonds, pick up
21 the others, and go on from there, which would be perfectly

1 consistent. The other would be to take over the obliga-
2 tions and keep them outstanding and make the payments as you
3 went along.

4 MR. MILLER: Might there not be some question,
5 though, if such bonds went out, for the attorneys that
6 were passing on the bonds, to say, Well, this bond
7 guarantees something that it can't guarantee because it
8 is guaranteeing a forty-year indebtedness instead of a
9 twenty-five year indebtedness?

10 MR. CASE: What we would say is that in case
11 of default, the State will obligate itself to raise the
12 necessary money to refund the bond issue, and the bonds
13 that were being sold would, of course, would be subject
14 to this. It would mesh together.

15 THE CHAIRMAN: Dr. Jenkins?

16 DR. JENKINS: Mr. Chairman, first, a matter of
17 clarification. I assume that the Committee recommendation
18 we are considering is the last sentence on G rather
19 than the last sentence on B?

20 THE CHAIRMAN: The other way around. The Com-
21 mittee recommendation is the last sentence on B.

1 DR. JENKINS: It does not include the twenty-
2 five years?

3 THE CHAIRMAN: That is correct.

4 DR. JENKINS: I will withhold my comment until
5 somebody proposes G, because I thought this was the last
6 recommendation of the Committee.

7 MR. CASE: The Chairman would like to say that
8 he is somewhat perplexed about really what the Committee
9 is -- this question is so close, this question is so
10 close that I think what we are really saying here is that
11 we submit it to the Commission, show you both sides of
12 it and whatever judgment is made here, after hearing the
13 argument, we are perfectly happy with it.

14 DR. JENKINS: That interpretation, while I
15 have the floor, I wish to speak for the original recom-
16 mendation on B and eliminating the limitation of twenty-
17 five years. At first glance, it would seem that if there
18 is a twenty-five year limitation for the general obliga-
19 tion bonds, then this ought to extend to the support of
20 credit, but in my opinion there is a great difference.
21 The general obligation bonds are paid from general tax

1 revenues. There may be in the future and probably
2 will be in the future many instances in which the State
3 may want to support bonds which are being paid for by
4 revenues from specific projects -- college dormitories,
5 we may want to take over the State function, public hous-
6 ing, port authority. We may in the future want to develop
7 a school authority construction such as they have in
8 the University of Pennsylvania. I don't think we should
9 in this Constitution estop the General Assembly from
10 such financing if this seems to be appropriate.

11 Let me take as an example, not Hopkins. I
12 think this sort of brings in a private institution.
13 Let's take the new campus at the University of Maryland,
14 Catonsville, which is opening today. The classroom
15 buildings there are built by bond issue, general obliga-
16 tion bond issues, and there is no question about that.
17 Let us suppose the University wants to put dormitories
18 there. Under present conditions, it could probably get
19 the money from the Federal agency, but this may change
20 in the future. Under this twenty-five year limitation,
21 then, the credit of the State could be to provide only

1 for a twenty-five year period, and the students then, the
2 student rentals would have to be considerably higher
3 than under a longer period. For example, for each
4 million dollars at a twenty-five year period, there would
5 have to be collected from students \$40,000 per year to
6 pay for the dormitory, plus the interest and operating
7 expenses. Under a forty-year period, this would be
8 \$25,000. I know from my own experience that the larger
9 sum per year would make the dormitory rentals almost
10 prohibitive.

11 I think the view in the Committee was that we
12 cannot trust the General Assembly; that unless we put
13 this limitation in the Constitution, the General Assembly
14 will just go haywire on this thing. I do not believe
15 this is true. I believe that the General Assembly will
16 consider each case on its merits. I, therefore, favor
17 not including the twenty-five year period in this last
18 statement.

19 THE CHAIRMAN: Mr. Hoff?

20 MR. HOFF: I am one of the proponents of the
21 twenty-five year limitation, and I can say that basically

1 there are two reasons. First, consistency. We see no
2 reason, or I see no reason why we should limit the State
3 in its own indebtedness to a period of twenty-five years
4 and then on the other hand say there shall be no such
5 limitation on the State's grant of credit or loan of
6 credit. If you have a limitation on one and the limita-
7 tion is good, it would seem to me to apply to the grant
8 of credit as well as to the creation of an indebtedness.

9 Secondly, I think one of the benefits of having
10 a limitation of twenty-five years is, as Dr. Jenkins
11 agrees, that it does avoid irresponsible postponement of,
12 let's say, repayment of a State obligation. The closer
13 you can bring this thing to home, and the sooner these
14 obligations have to be paid off, the more it will reflect
15 upon the judgment of those who have created the obliga-
16 tion, namely, the General Assembly; and I think that there
17 would be a natural tendency to avoid the responsibility
18 for an act creating an obligation by postponing and pro-
19 longing unlimited periods of grants of credit, rather
20 than having the thing face up within the period of, let's
21 say, the period of the lifetime of those who have given

1 their assent to such a loan.

2 Even in the event of, let's say, a forty-year
3 loan, which has been the example, I still don't believe
4 that the State would be prevented from granting, if
5 these bonds were issued serially, I still think the State
6 would be able to guarantee the first twenty-five years
7 of those bonds. The last fifteen years might be another
8 story, but I think that that may be of some considerable
9 help to the examples as set forth by Dr. Jenkins. The
10 dormitory ought to be able to carry itself the last
11 fifteen years when the interest rates, or the amount of
12 interest would be considerably lower after redemption of
13 25/40ths of the principal and bonds. For these reasons,
14 at least two of us on the Committee felt that the limita-
15 tion that you impose upon the State in the grant of its
16 indebtedness, in the creation of its indebtedness should
17 also be imposed in the grant of credit.

18 THE CHAIRMAN: Mr. Gentry?

19 MR. GENTRY: My question was really to get
20 to the understanding of the word, credit. I thought I
21 heard Mr. Case explain to Mr. Sykes that credit was not

1 as broad so as to include indebtedness up above and then
2 he later answered Congressman Miller by saying that the
3 magic words would be used in this authorizing act. I
4 wonder if it is the lending of credit, pledging it as
5 security, even though it be contingent, would that amount
6 to a general obligation?

7 MR. CASE: Mr. Gentry, indebtedness means in,
8 effect, the entity that is doing the acting, the moving
9 entity borrowing its funds from some third person. The
10 lending of credit means that the moving entity is making
11 it possible for one third person to borrow from another
12 third person. This is the distinction between the two.

13 The pledge of credit can be a pledge of the
14 full faith and credit and irrevocable taxing power, which
15 would mean that if at any time the first third person
16 did not pay to the second third person, then the guarantor,
17 the State, would use its irrevocable, unlimited taxing
18 power, and at that point of time, an indebtedness would
19 be created which would be a debt of the State, but until
20 the default took place, there would be no debt, and it is
21 for this reason that I suggested to Mr. Sykes that the use

1 of the word, credit, does not include indebtedness as
2 such. It does include, of course, the possibility that
3 indebtedness might be incurred at a later time.

4 THE CHAIRMAN: Dr. Bard?

5 DR. BARD: I have two questions for the Chair-
6 man to educate me. In general, an outstanding indebted-
7 ness, a person can easily enough find out what is the
8 outstanding indebtedness of the State of Maryland. Would
9 one be able to find out fairly easily the outstanding
10 endorsements of credit, the extent of it? Would there
11 be statutory limits to it, and your answer to the ques-
12 tion would permit me to respond, if I might, Mr. Chairman,
13 on my view in respect to twenty-five years, twenty-five
14 year limitation.

15 MR. CASE: What we call the bond circular,
16 which is, in effect, a prospectus given to potential
17 purchasers of bonds, will traditionally show contingent
18 obligations, particularly in the case that we have been,
19 or the cases that we have been talking about here today,
20 namely, the dormitory. What you would find would be
21 this one page general obligation debt, which would be the

1 first case I talked to Mr. Gentry about, where the moving
2 entity got the money and used it. Another table would
3 show contingent debt. These debts are debts, not present
4 debts, but are situations which could, if the first third
5 person, which is obligated to pay defaulted, ripen into
6 a general obligation, and these are shown on the balance
7 sheet, so that the investor, this sophisticated investor
8 examines not only what the outstanding debt is, but
9 what might be the debt in case of default by third persons.
10 Any good sound bond circular or prospectus must show this
11 information.

12 DR. BARD: I think if this is so and the lat-
13 ter could drive to a far greater degree than the former,
14 and as I visualize this, this is certainly possible, that
15 is, this endorsement of credit could go way beyond the
16 actual outstanding indebtedness of the State itself.

17 MR. CASE: That is correct.

18 DR. BARD: If this be so, then I do believe
19 that there ought to be some limit on this, and it seems to
20 me that the mere nature of the twenty-five limit, and I
21 am involved in school activities, too, is important. I do

1 think that there would be possibilities of extending
2 this twenty-five year limit on the basis of the way the
3 loan goes through, even for dormitories, would there not
4 be?

5 MR. CASE: Extending it?

6 DR. BARD: Yes. You might set up as twenty-
7 five and then fifteen additional, so you could guarantee
8 the first portion of it. Couldn't you do that?

9 THE CHAIRMAN: You mean as Mr. Hoff suggested?

10 DR. BARD: Pretty much that way.

11 MR. CASE: In other words, take out the first
12 twenty-five years?

13 DR. BARD: Yes. The dormitories could still
14 be built.

15 MR. CASE: If the Commission wants to limit it,
16 I would guess that the ingenuity of bond counsel knows no
17 bounds.

18 THE CHAIRMAN: Judge Adkins?

19 JUDGE ADKINS: Just as a matter of information,
20 does the lending of the credit of the State under the
21 last sentence add as much strength to the obligation in

1 the marketplace as does the creation of the full faith
2 and credit indebtedness under the earlier Sections of
3 the provision? In other words, is there any distinction
4 drawn in the marketplace between the endorsement of the
5 State and the original obligation of the State? Does
6 one receive as favorable consideration in the marketplace?

7 MR. CASE: When you say consideration, the
8 word, credit, implies full faith and credit, unlimited
9 taxing power.

10 JUDGE ADKINS: Does that carry with it, for
11 example, a directive to the Comptroller to set apart from
12 the first revenues in the event the obligation is in
13 default and the General Assembly takes no further action?

14 MR. CASE: It would require -- no, there would
15 have to be further action.

16 JUDGE ADKINS: By the Legislature?

17 MR. CASE: By the Legislature. The Legislature
18 would have to come to the rescue of the situation by
19 issuing State obligations, which then would put into
20 motion all of the material that goes above in this Section.

21 JUDGE ADKINS: If the Legislature were to

1 refuse to take that action what would then be the recourse
2 of the holders of the bonds?

3 MR. CASE: We had that question come up in
4 the MIDFA case, and because that was the case, you know
5 where the court finally held that the full faith and
6 credit wasn't pledged, and what would happen would be,
7 first, that somebody would try to file a taxpayer's
8 suit, I suppose, to mandamus the Legislature, which
9 probably wouldn't get too far, as I understand the law
10 right now; but secondly, of course, as a practical matter,
11 the name of the State would be completely kaput, and
12 from that time on, everything would stop. Nobody, I
13 mean Wall Street would just say, Well, Maryland is the
14 one that defaulted on the bonds, and that is the end of
15 it.

16 THE CHAIRMAN: Isn't that the important thing?
17 The State would then be in default.

18 MR. CASE: That is right. It would be in de-
19 fault. This has never happened, thank goodness, and hope-
20 fully never will.

21 JUDGE ADKINS: I assume the answer to my question

1 is the lending of credit under this provision is accep-
2 table to the marketplace to the same extent as the creation
3 of an indebtedness of the State insofar as the attachment
4 of value to endorsement is concerned?

5 MR. CASE: It is considered valuable, yes.

6 JUDGE ADKINS: Is it as valuable?

7 MR. CASE: It certainly is, yes. The answer
8 to that in short is Yes. It is considered as valuable.

9 JUDGE ADKINS: So you don't feel it is neces-
10 sary to go any farther here?

11 MR. CASE: No.

12 JUDGE ADKINS: In providing for alternate
13 methods of collection in order to get the best possible
14 acceptance in the marketplace, as you have done with
15 your insertion of your provision relative to the Controller?

16 MR. CASE: No.

17 JUDGE ADKINS: You don't feel some alternate
18 method of payment is necessary in the absence of subse-
19 quent acts by the Legislature in the event of default on
20 the obligation?

21 MR. CASE: No. Credit means credit. It is an

1 absolute term. When you pledge your credit, you have
2 got to pay if there is a default by the principal obligor.

3 THE CHAIRMAN: Mr. Sayre?

4 MR. SAYRE: One question. Is this last sen-
5 tence not a separate thought from the rest of the Article?

6 MR. CASE: Yes.

7 MR. SAYRE: Would it be preferable to have this
8 as a separate paragraph, then?

9 MR. CASE: We thought about that, Phil, and
10 it is not a separate paragraph now. It is really right
11 in the middle of existing Section 34. I can't speak
12 for the Committee, but personally, there is no difference.
13 If the Committee on Style wanted to pull it out and put
14 it into another Section, that is all right.

15 MR. SAYRE: It would seem to me clearer to
16 put it as a separate paragraph since it is a separate
17 thought. If I may tie that into the second part, Mr. Hoff
18 mentioned that for the sake of consistency, have twenty-
19 five years on credit, as on indebtedness, and I don't
20 think that is being consistent, because you are not
21 relating something that is logically related to each other.

1 In other words, if we have anything in the other Section
2 of the Constitution that requires a certain vote, here we
3 are comparing apples to oranges. Therefore, it is a dif-
4 ferent animal, and it doesn't relate to it statistically.

5 I can see here where we are talking about
6 lending of credit as a different animal from indebted-
7 ness, and therefore, because it is a different animal,
8 I can see only injurious and deleterious effects in seek-
9 ing favorable mortgage or loan terms if we should provide
10 a limit to credit. In other words, I am going to go
11 out in the marketplace and get a good mortgage on my new
12 dormitory or have other favorable loans, and I can even do
13 better if I can get the State to back me up on this. In
14 other words, as I see it, you wouldn't want to hamstring
15 an economic development of the State, which even this
16 could do. It is just two different animals, and you
17 wouldn't want to tie up the credit to twenty-five years
18 as you would the indebtedness. When you have actual in-
19 currence of indebtedness, then the twenty-five year part
20 becomes effective, and I think this is perfectly well
21 stated as it is.

1 THE CHAIRMAN: Mr. Hoff?

2 MR. HOFF: I don't think it is inconsistent
3 to say -- I think it is inconsistent to say that the
4 State can do for somebody else what it cannot do for
5 itself.

6 MR. SAYRE: But it can do for itself when it
7 becomes actual under the twenty-five years.

8 MR. HOFF: It can do for itself, issue in-
9 debtedness only to the extent of a twenty-five year period.
10 Without that same limitation, it could grant credit or
11 potential indebtedness and extend that potential indebted-
12 ness to an unlimited period, for a hundred years if the
13 Legislature so chose. I think that there is argument
14 for consistency in putting the same limitation on.

15 I might also say that, and Mr. Case can cor-
16 rect me, but does not the grant of credit have the same --
17 an increase in the grant of credit -- have the same
18 adverse effect on the ratings of the State's obligations
19 or State's indebtedness as actually the issuance of the
20 indebtedness itself?

21 MR. CASE: Well, that also came up in the

1 MIDFA case, and I can answer it by the way Mr. Reppe,
2 the senior partner of Alexander Brown answered it,
3 when I asked him the same question. He said that it did
4 not have exactly the same bearing because the first thing
5 that the bond analyst looks at is the debt ratio, which
6 means the ratio of direct debt to assessable basis, and
7 of course, it does not figure into that equation, so that
8 if you are talking about a 13 per cent debt or 12 per
9 cent debt, you do not take into consideration this, but
10 the overextension of credit being as it is, a breeding of
11 potential liability, is looked at by Moddy's, and if the
12 great proliferation of new situations were shown on the
13 balance sheet, it is taken into consideration.

14 THE CHAIRMAN: We are going to have to break
15 off at this point for lunch, because we can't finish the
16 debate, but before we do so, may I make just this obser-
17 vation, as I think the debate on this point has indicated.
18 This is perhaps the most troublesome part of this whole
19 subject, and the difficulties that the Commission is
20 having are the same difficulties that everybody who has
21 wrestled with it over the years has had, even going back

1 to 1851, the argument being that the Legislature can
2 easily pledge the State's credit so long as it is not
3 concerned with raising taxes now to take care of it or pro-
4 viding in the indebtedness it is going to affect the next
5 State budget. Therefore, the temptation is to be reck-
6 less with the pledge of the State's credit. In the previous
7 Constitutions, the only remedy for this was to absolutely
8 forbid it, so that in the present Constitution, as to
9 both State and with limitations of county and Baltimore
10 City, you simply cannot do it. You cannot lend the credit
11 of the State to any individual, association, or corpora-
12 tion.

13 This draft proposes to remove that limitation
14 and you should have that in mind. This is a definite
15 step to remove the limitation and permit the granting of
16 the credit. The question is whether you want to go the
17 full extent and not have any limitation, or whether you
18 are going to have some limitation, twenty-five years,
19 or some other limitation.

20 MR. CASE: May I make a statement on that?
21 With all due respect to you, at least the Attorney General

1 does not share this view that you just expressed. It is
2 true that the present Section 34 says in substance that,
3 and I will read it again, The credit of the State shall
4 not in any manner be given or loaned to or in aid of any
5 individual, association or corporation, but a great deal
6 of judicial gloss has been placed on that language by
7 the courts around the country, and many constitutions
8 have exactly those same words, and by our own Court of
9 Appeals in the Frostburg case, which led the Attorney
10 General to give an official opinion this year that if a
11 public purpose was served, then the credit of the State
12 could be lent, this provision in the Constitution to
13 the contrary notwithstanding, and that opinion is the
14 opinion that, of course, we challenged in the MIDFA case
15 and it was that very precise point that the court did
16 not reach, but as the law stands today, at least if you
17 want to call the Attorney General's opinions law, it is
18 that the credit of the State can be given if there is a
19 public purpose served, and I might say that in the lower
20 court in that case, Jim Cullen said to us privately that
21 he would have ruled if called upon to do so that the

1 Attorney General was correct in that, and that because
2 of the Frostburg case, which was the garment factory
3 case, that I talked to you about earlier, that he felt
4 that credit could be lent if due process would be satisfied,
5 the due process argument would be satisfied.

6 THE CHAIRMAN: Let's adjourn for lunch now.

7 DR. JENKINS: Mr. Chairman, may I have a word?
8 I am very unhappy with not getting to a vote on this. I
9 would like to explain to the Chairman I cannot be here
10 this afternoon. I think this may be of very crucial
11 importance to higher education. Could I have the unusual
12 privilege of giving the Chairman my proxy to cast my
13 vote against the twenty-five year limitation?

14 THE CHAIRMAN: In the absence of objections
15 and since you have been present throughout the discussion
16 on this, I would say that we would at the appropriate
17 time record your vote in opposition. Is there any objec-
18 tion to that procedure?

19 (There was no response.)

20 MR. HOFF: I would like to be recorded the
21 same way, because I won't be here this afternoon.

1 MR. CASE: Could we take a vote on it?

2 THE CHAIRMAN: Is there any further discussion
3 that anybody wants on this?

4 DR. BARD: I have a question to ask Dr. Jenkins
5 on it. Is it not true that under the court decision,
6 the higher educational institutions can now build dor-
7 mitories under this arrangement?

8 DR. JENKINS: Yes, but without the support of
9 the State; this is not a problem now as long as the
10 Federal Government, and you are ending the discussion,
11 Mr. Chairman, as long as the Federal Government provides
12 these funds, but the vicissitudes of political life are
13 such that the Federal Government may not do this. There-
14 fore, we would forever estop without a Constitution
15 amendment the State entering into this.

16 MR. CLAGETT: Mr. Chairman, I want to be clear
17 of record whether or not the local subdivisions are or
18 are not included within the Lines 17 and 18 of the
19 proposed substitute Article, where the words appear, any
20 individual, association or corporation.

21 THE CHAIRMAN: I am not sure whether I understand

1 your sentence. The credit that is spoken of in this
2 Section is the credit of the State, and not of the
3 political subdivisions. Is that your question? This
4 does not deal with the question of --

5 MR. CLAGETT: No, but where the local sub-
6 divisions are the beneficiary of that credit.

7 THE CHAIRMAN: I think Mr. Case stated that he
8 would so construe it.

9 MR. CLAGETT: That is what I understood him
10 to say, and that would be part of the record?

11 THE CHAIRMAN: Yes.

12 MR. CLAGETT: I also understood him to say
13 that there has never been any interpretation of the word,
14 corporation, to include municipal corporation.

15 MR. CASE: That is correct.

16 THE CHAIRMAN: Nor to the contrary.

17 MR. CASE: Nor to the contrary.

18 MR. CLAGETT: Nor to the contrary.

19 MR. BROOKS: I might add many, many States
20 have specific provisions dealing with political subdivisions
21 on this very issue separate and apart from the general

1 provisions such as this.

2 MR. CLAGETT: That is why I am asking the
3 question, to pinpoint our thinking here, because I am
4 aware of that.

5 THE CHAIRMAN: Mrs. Bothe?

6 MRS. BOTHE: I just wanted to ask whether the
7 present fifteen-year limitation on indebtedness also
8 applies to the granting of credit.

9 MR. CASE: There is nothing in the Constitution
10 that says anything about fifteen years as far as credit
11 is concerned. Just as Mr. Eney, the Chairman, has said,
12 it just prohibits it, period.

13 MRS. BOTHE: But nevertheless it has been
14 extended.

15 MR. CASE: The Attorney General says it is not
16 prohibited unless there is a public purpose, and you
17 could have it for forty years. His opinion is that you
18 could have it for forty years.

19 THE CHAIRMAN: Are you ready for the question
20 on the last sentence? Any further discussion? All right.

21 MR. SYKES: Mr. Chairman, I think it may be

1 better to defer this, because I am not sure that all the
2 alternatives are presented. There is a third alternative,
3 which is to retain the provision in the existing Consti-
4 tution prohibiting the extension of credit and to make
5 the Legislature actually borrow the money and show it on
6 the State balance sheet, that lessens to some extent the
7 temptation to get into this.

8 THE CHAIRMAN: I didn't mean to suggest that
9 the only question here is the twenty-five years or none.
10 The question is whether the whole sentence shall be
11 approved also. Are you ready to vote on that question
12 as well as on the point?

13 MR. SYKES: I don't think there is any point
14 on that.

15 JUDGE ADKINS: I would prefer to carry it over
16 to think about it over the lunch hour.

17 THE CHAIRMAN: Is there any objection to record-
18 ing Dr. Jenkins' and Mr. Mercer Smith's voting in favor
19 of the provision which appears on Sheet B and against the
20 provision which appears on Sheet G? I take it, Mr. Smith
21 and Dr. Jenkins, that you would vote against a provision

1 that would prevent the credit of the State being given
2 in a loan to any individual, et cetera?

3 DR. JENKINS: Or a limitation of twenty-five
4 years.

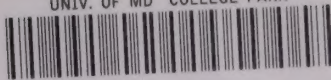
5 DR. BURDETTE: Mr. Chairman, that is the point.
6 I raise no objection to the vote being recorded on this
7 specific issue, but it should seem to me that Mr. Sykes
8 brings up his alternative, and it is debated here that
9 people should not vote on that.

10 THE CHAIRMAN: In view of an objection then,
11 they will be permitted to vote only on the point against
12 which there is to be no objection, against the twenty-
13 five years. He will not be recorded on the other
14 objection. Let's adjourn for lunch.

15 (Whereupon the meeting adjourned at 12:15 p.m.
16 to reconvene at 1:00 p.m. of the same day.)

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